No. 1197

IN THE SUPREME COURT OF THE UNITED STATES

MIAMI BRIDGE COMPANY,
a Florida Corporation,
Petitioner,

vs.

THE RAILROAD COMMISSION
OF THE STATE OF FLORIDA,
Respondent.

Petition for
Certiorari.

Mitchell D. Price,
610 Biscayne Building,
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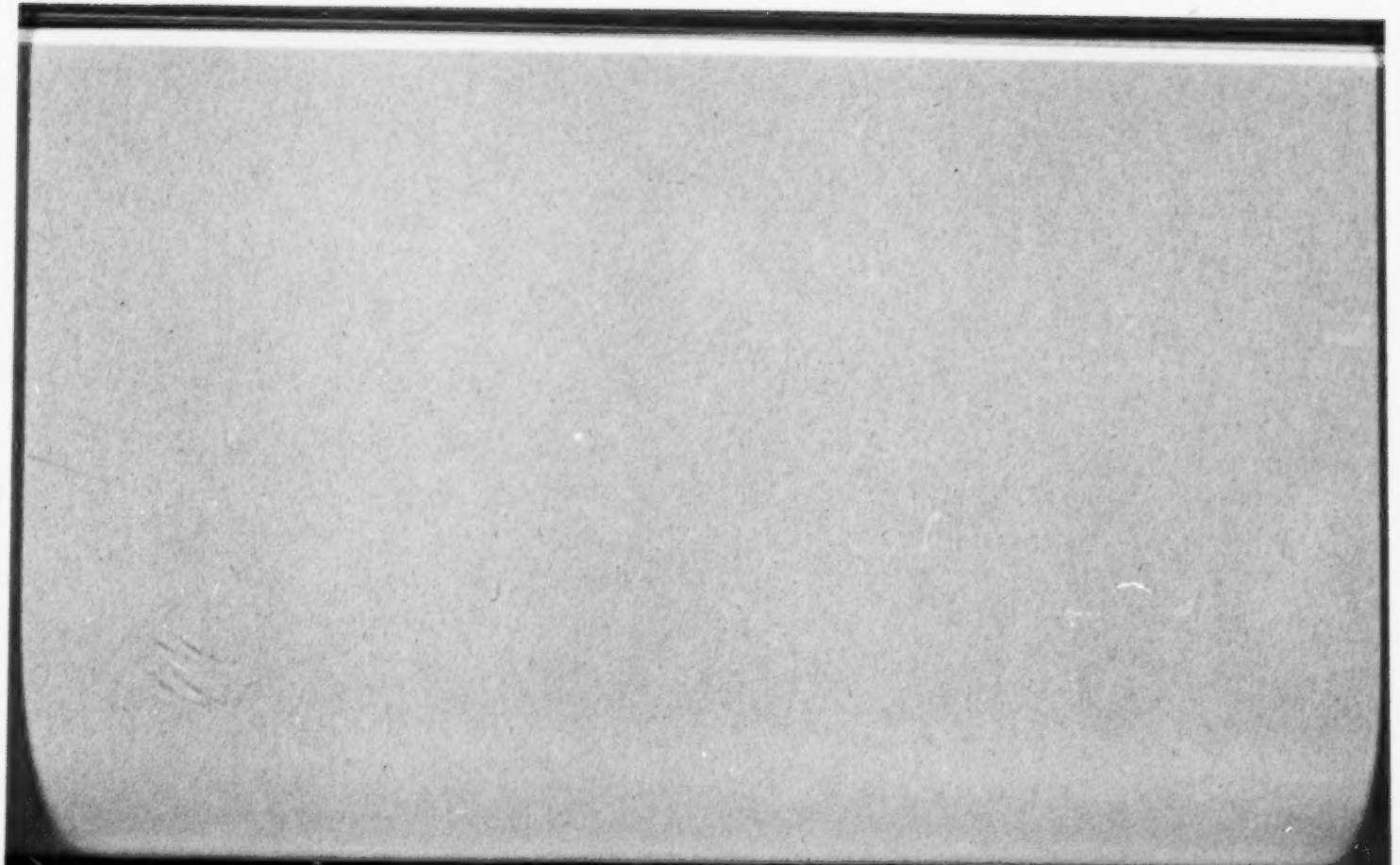
Attorney for Petitioner.



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Index to Exhibits Attached to Petition.

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Petition for Certiorari.

SUMMARY STATEMENT OF MATTERS INVOLVED

Your petitioner respectfully shows unto this Honorable Court that it is the owner and holder of a toll road and bridge known as the VENETIAN CAUSEWAY extending across Biscayne Bay between the City of Miami and the City of Miami Beach, in Dade County, Florida; that its ownership and right to assess and collect toll are based upon Chapter 10,497 enacted by the Legislature of the State of Florida in 1925 and the acceptance and full compliance with the terms of said act. Such ownership and right to collect toll within the limitations of said chapter have been judicially established by the Supreme Court of the State of Florida.

Petitioner further shows unto the Court that The Miami Beach Railway Company, a corporation organ-

ized under the laws of the State of Florida, engaged in the business of operating busses for hire between the cities of Miami and Miami Beach, had previously used one of three free public causeways built by Dade County, Florida, connecting the City of Miami and the City of Miami Beach, but on or about the 14th day of October, 1941, said Railway Company conceived the idea of using the toll bridge constructed and operated by the petitioner and its predecessors in title, known as the Venetian Causeway, but refused to pay the rate of toll charged by the petitioner herein, to-wit, 25c per bus for each one-way bus passage over said bridge; that the busses operated by The Miami Beach Railway Company carry from forty to fifty passengers and when filled weigh between ten and fifteen thousand pounds, and the operation thereof causes great friction, wear and tear upon petitioner's causeway; that litigation was first begun in the Circuit Court in and for Dade County, Florida, by The Miami Beach Railway Company, who sought to prohibit the Miami Bridge Company from collecting any toll, or else to compel them to reduce their toll; that the Railway Company was (and still is) collecting 10c for each passenger hauled by bus one way across said bridge; that said litigation was determined by the Supreme Court of the State of Florida in the case of MIAMI BRIDGE COMPANY vs. THE MIAMI BEACH RAILWAY COMPANY, reported in 12 Southern Reporter (2), page 438; that in said decision the Supreme Court of Florida held that **The Miami Bridge Company owned and had the right to operate said toll bridge and to fix and charge reasonable toll for the use thereof.**

That thereafter, to-wit, at its 1943 session, the Legis-

lature of the State of Florida enacted Chapter 21,743, which purported to amend Section 347.08 of Chapter 347 of the Florida Statutes, as codified in 1941; that Chapter 347 of said compiled statutes contained 25 sections and in its entirety embraced the Florida law relating to ferries, toll bridges, dams and log ditches; that said Chapter 347 at the time of the amendment contained and still contains, a section known as Section 347.20, reading as follows, to-wit:

> "Vested rights not impaired. Nothing in this chapter shall affect or impair any right or privilege belonging to any individual or corporation by virtue of any law of this state."

That Section 347.20 was not changed, altered or modified by the passage of Chapter 21,743, and Sections 347.08 and 347.20 should be read and construed as essential parts of one act.

That after the passage of Chapter 21,743, The Florida Railroad Commission, upon petition filed by The Miami Beach Railway Company, advised the petitioner herein that it intended to take over and regulate the operation of the Venetian Causeway and to fix the tolls to be charged each person or vehicle using the same; that the petitioner herein protested the action of The Railroad Commission and filed a motion with The Railroad Commission to dismiss said action, and also filed five pleas in Bar to the jurisdiction of said Railroad Commission, denying its right to regulate the operation and fix the tolls to be charged for the use of its bridge. The gist of petitioner's constitutional grounds relied upon

for reversal are set up in Pleas numbers one, two and three contained in transcript at paegs 17, 20 and 23, respectively.

Reason Relied Upon for the Allowance of Writ of Certiorari

The five pleas, so filed with The Railroad Commission as aforesaid, in the aggregate, set up two fundamental defenses: (1) they alleged that Chapter 21,743 was unconstitutional if applied to the Venetian Causeway, because it impaired the obligation of a judicially validated contract; (2) that the phraseology of said act and the phraseology of the chapter of which it became a part, prohibited it from applying to the Venetian Causeway, and if so applied it would deprive the petitioner of vested rights without consideration and without due process of law. Stress was laid in said motion and pleas and in the briefs filed with The Railroad Commission and later with the Supreme Court of the State of Florida on Section 10, Article 1, of the Constitution of the United States, wherein the following language is used:

> "No state shall . . . pass any . . . law impairing the obligation of contracts . . ."

Said pleas also stressed the defense that Chapter 21,743 did not apply to the Venetian Causeway, because such application would impair vested rights contrary to Section 347.20, hereinbefore quoted. Said pleas definitely alleged that the petitioner and every stockholder and every bond holder, interested in the Miami Bridge Company possessed vested rights in and to said bridge and

the operation thereof; **Thereafter The Railroad Commission of the State of Florida handed down a final judgment as to the matters in dispute in which they denied petitioner's motion to dismiss and struck petitioner's pleas in bar from the record,** thereby rendering a final judgment upon three questions, to-wit:

1. That Chapter 21,743, enacted by the Legislature of 1943 did apply to the Venetian Causeway, and that said chapter was valid and constitutional.

2. That the passage of Chapter 21,743 did not impair the contract between the State of Florida and the petitioner herein.

3. That discrimination was disclosed by the pleadings based exclusively upon a comparison between the rate charged by the Miami Bridge Company to The Miami Beach Railway Company for the passage of its busses and the rate charged to a jitney company operating under a former contract, for the passage of its five passenger automobiles; that said discrimination in effect created such an emergency that public health, public welfare, public safety and public morals, (not shown by any allegation or proof to have been affected), were jeopardized and authorized the Legislature to invoke the aid of the police power of the state to avoid public disaster and thus prevent the passage of Chapter 21,743 being in conflict with the Federal Constitution.

The three questions above have been finally adjudicated and determined; first, by The Railroad Commission adversely to the petitioner herein, and second, by

the judgment of the Supreme Court of the State of Florida, which was rendered on the 19th day of December, 1944, wherein said court affirmed the action and judgment of The Florida Railroad Commission and authorized The Railroad Commission "to fix tolls and regulate the operation of the Venetian Causeway owned and operated by the petitioner." That the only subsequent judgment that could be handed down by The Railroad Commission, would be a judgment fixing the amount of toll to be collected, which question was not an issue in the original action. That the question decided by the Railroad Commission and affirmed by the Supreme Court of the State of Florida cannot again be reviewed and their findings reversed by any tribunal save and except this Honorable Court. That the issues raised in said case are of vast importance, not only to the petitioner herein, but to every person, firm or corporation engaged in any way in serving the public. That to sustain Chapter 21,743 and apply same to the Miami Bridge Company, is equivalent to saying, Section Ten of Article 1 of the Federal Constitution does not apply where any person or corporation seeking to advance his or its own private interest without any legal foundation and without rendering any proof shouts "discrimination"—"police power."

Discrimination between two corporations on a question of rates not involving the general public has never before been asserted by the Supreme Court of Florida as an adequate ground for the intervention of police power.

Petitioner further alleges that the application of Chapter 21,743 as enacted by the Florida Legislature in

1943 to the Venetian Causeway would deprive the petitioner herein not only of its right to fix tolls and charges for the use of said causeway but also of its right to manage and control said bridge and to determine "the uses and hours for keeping open" and would vest in the Railroad Commission the right to fix tolls and charges and make rules and regulations respecting the operation of said bridge, including the control of its bookkeeping system, all of which is in direct conflict with that portion of the federal Constitution upon which petitioner relies which prohibits the passage of any act by any state legislature impairing the obligation of a valid contract. The application of Chapter 21,743 to petitioner's bridge would place the control of the bridge in the hands of nonresidents who would not be acquainted with the employees nor with local conditions.

The opinion sought to be set aside by this petitioner was dated the 19th day of December, 1944, and on the 3rd day of January, 1945, **the petitioner herein filed a motion for a rehearing** which was duly considered by the Supreme Court of Florida, **and by it denied on the 26th day of January, 1945.**

Petitioner delivers herewith printed and certified copies of the original record of the proceedings before The Railroad Commission, as transmitted to the Supreme Court of the State of Florida, together with the Transcript of all proceedings which transpired before the Supreme Court of the State of Florida.

To facilitate an examination of the questions presented by this petition, the petitioner attaches hereto a

true copy of Chapter 10,497, upon which petitioner bases its claim of title; said copy is marked for identification as Petitioner's Exhibit "A".

Petitioner, for the same purpose, also attaches hereto a copy of Chapter 21,743, enacted by the Legislature of the State of Florida in 1943. Said instrument is marked for identification as Petitioner's Exhibit "B".

Petitioner also attaches hereto a copy of Chapter 347 of the 1941 Compiled Acts, showing said Chapter as it existed at the time of the passage of Chapter 21,743. Said instrument is identified as Petitioner's Exhibit "C." Special attention is directed to Section 347.20.

Petitioner refers to a copy of the final judgment rendered by the Supreme Court of the State of Florida on the 19th day of December, 1944, shown in Transcript at page fifty (50).

The Motion for a Rehearing, filed with the Supreme Court of the State of Florida on the 3rd day of January, 1945, and **the Order denying same, dated the 26th day of January, 1945,** are made a part of the Transcript of Record, (transcript pages 61 and 68 respectively) delivered with this Petition.

WHEREFORE, in view of the premises, petitioner prays for a Writ of Certiorari to be issued from the Supreme Court of the United States of America to the Supreme Court of the State of Florida, directing said Court to send up the record in the case of the Miami Bridge Company vs. The Railroad Commission of Florida,

to permit this Court to review the decision of the Supreme Court of the State of Florida; that said process be made returnable in accordance with the rules and practice of this Honorable Court, and petitioner prays for the issuance of such other process as is usual and proper under the circumstances; and petitioner further prays that the Court will enter an order granting petitioner's application for the Writ of Certiorari; that the Court will examine the certified copy of the transcript now on file in this Court and direct that said Transcript of the Record heretofore filed by the petitioner and tendered with this Petition shall be treated by this Honorable Court as though sent up by the Supreme Court of the State of Florida in response to a formal writ.

Respectfully submitted,

Attorney for Petitioner.

MIAMI BRIDGE COMPANY,

By L. L. Hillbom.

President.

L. L. HILLBOM being duly sworn deposes and says that she is President of the Miami Bridge Company, a Florida corporation, and that the allegations and statements contained in the petition for Certiorari are true.

L. L. Hillbom

SUBSCRIBED AND SWORN TO before me this 21st day of April, A. D. 1945.

Gladys Bandy

Notary Public, State of Fla. at Large.

My Commission expires 6/21/48

(Petitioner's Exhibit "A")

CHAPTER 10497 SPECIAL ACTS
Regular Session, 1925.

LEGISLATIVE ACT

AN ACT to encourage and authorize the construction, maintenance and operation of roadways, bridges, viaducts and fills, including approaches thereto, over, across or through the waters and submerged lands of that part of Bay Biscayne lying North of the existing County Causeway, connecting Miami and Miami Beach, in Dade County, Florida; to maintain and operate the same as toll roads; regulating the operation thereof and prescribing tolls to be collected thereon; granting the right to construct thereon concrete arches, trestles, drawbridges, docks, wharves, toll houses, toll gates, depots and other necessary buildings; providing for the purchase of said roadways, when completed, by the County of Dade; and providing for a certificate of authority from the Secretary of State.

WHEREAS, the intimate, business and social relations existing between the people on the East and West shores of Biscayne Bay and the islands in Biscayne Bay, in Dade Conuty, in the State of Florida, render it desirable and important for the proper development of the said property and for the convenience of all of the people of these communities that additional lines of transportation and communication across said Biscayne Bay North of the existing County Causeway connecting Miami and Miami Beach, Florida, or between islands now existing or hereafter to be constructed, than now exist, should be constructed, opened and maintained; and

WHEREAS, to materially shorten the distance between given points on the opposite sides of the said Bay, and between islands now existing or hereafter to be constructed, will require the construction of roadways, bridges, viaducts and fills, including the approaches thereto, of approximately two to three miles or more in length over and across the waters of said Bay Biscayne; and

WHEREAS, it is estimated that the cost of properly constructing and equipping such roadways, bridges, viaducts and fills, including the approaches thereto, will be approximately one and one half million dollars ($1,500,000.00) or more; and

WHEREAS, it is desirable that such roadways, bridges, viaducts and fills, including the approaches thereto, shall be constructed as speedily as possible so as to relieve the congested traffic now existing between the two said cities, and also to relieve the said County of

Dade of the burden of providing a roadway or roadways to carry the traffic across said Bay Biscayne; and

WHEREAS, it is desirable that such roadways, bridges, viaducts and fills, including approaches thereto, shall be constructed as speedily as possible and that such pledges shall be given by the State of Florida as will encourage investment of the capital needed for the construction thereof; NOW, THEREFORE,

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

Section 1. That any individual, individuals, corporation or corporations, now or hereafter created or doing business pursuant to the laws of the State of Florida, who or which shall, within ninety days after the passage of this Act and its approval by the Governor or after its becoming a law without the approval of the Governor, file in the office of the Secretary of State a plat delineating or showing a surveyed route or line of roadway definitely located and described over, across or through the waters and submerged lands of that part of Bay Biscayne lying to the north of the existing County Causeway connecting Miami and Miami Beach, Florida, shall, after securing permission from the War Department of the United States, have the right and is hereby granted the franchise and privilege to construct in accordance with plats, plans and specifications, approved by the War Department of the United States, maintain and operate a road and roadways and toll bridges with their connecting viaducts and fills appurtenant thereto over, across or through the waters and lands shown on such plat or plans; provided that nothing contained in this Act shall

be construed as a right to take private or public property for such purposes without due process of law and without just compensation.

Section 2. That any such individual, individuals, corporation or corporations so filing plats and plans of such surveys as set forth in Section 1 of this Act shall begin the actual work constructing of such roadway, roadways, bridges, viaducts and fills, including the approaches thereto, within ninety days from the filing of same, and shall have such roadway, roadways, bridges, viaducts and fills, including the approaches thereto, completed and ready for use within eighteen months after the passage of this Act.

Section 3. That a condition precedent to the taking effect of any grant or franchise authorized by this Act, the Legislature hereby reserves the right unto the County of Dade to purchase at any time within the term of any such grant or franchise, or at and after the expiration of any such grant or franchise, such roadway, roadways, bridge or bridges, viaduct or viaducts, approaches and other fills connected therewith, constructed in pursuance of the provisions of this Act. When the County of Dade elects to exercise its right to purchase under the provisions of this Act, not less than sixty days' notice of such election shall be given the owner or owners of such roadways, bridges, viaducts, approaches and fills, when a Board of Appraisers shall be appointed to determine the value thereof; one member of said Board shall be named by the purchaser, one by the owner or owners, and the two so named shall designate a third, the price agreed on by the Appraisers shall represent a fair consideration for the property to be purchased and shall be

the maximum amount required by the County of Dade to be paid therefor. No such election to purchase shall be binding on the owner or owners unless exercised within six months after the Board of Appraisers make their findings as to the value.

Section 4. That when the conditions of this Act as set forth in Sections 1 and 2 of this Act, have been complied with by any individual, individuals, corporation or corporations, then it shall become the duty of the Secretary of the State of Florida to issue a certificate covering a complete description of said roadways, viaducts, fills, bridges and approaches when and as constructed, said description to be furnished by the owners and certified to by a registered engineer, and shall state that such conditions as set forth herein have been complied with, and when such certificate shall be so issued it shall be filed in the office of the Clerk of the Circuit Court in and for Dade County. Said certificate shall authorize the exercise of such grant or franchise, as herein stated, for a term of twenty-five years from the date of its issuance. Should the duly qualified electors of the County of Dade fail to exercise their option to purchase as is given and reserved to them in Section 5 of this Act, then the owner or owners of said roads, bridges, viaducts and fills, including the approaches thereto, shall have the right to continue the operation of such roads, bridges, viaducts and fills, including the approaches thereto, as a toll roadway, and to operate the same with all the rights granted by this Act and subject to the provisions of this Act, for an additional term of twenty-five years, or until the duly qualified electors of the County of Dade shall, by proper action, elect to purchase the same, and shall

have paid to the owner or owners thereof such sum or sums as herein provided to be ascertained.

Section 5. That such roadway or roadways, bridges, viaducts and fills, including the approaches thereto, constructed, operated and maintained under the provisions of this Act, on which a toll is collected, shall be open for traffic at any and all times and maintained in a condition safe and suitable for travel; and the tolls to be collected for travel thereon shall not exceed the following schedule, to-wit:

Pedestrians, each either direction	$ .05
Individual on bicycle, either direction	.05
Individual on Motorcycle,	.10
One horse and rider,	.10
One horse, vehicle and driver, either direction	.15
Two horses, vehicle and driver, either direction	.25
One seated automobile and driver, either direction	.15
Two seated automobile and driver, either direction	.25
For hire car and driver, either direction	.50
Any other bus, taxi or jitney, and driver, either direction	.50
Each additional horse or person, either direction	.05

Sight seeing cars, 40 to 60 horse power, either direction 5.00

Sight seeing cars, 60 to 80 horse power, either direction 10.00

Sight seeing cars above 80 horse power, either direction 15.00

Each passenger on sight seeing cars, either direction .05

One ton truck and driver, either direction 1.00

Truck and driver, either direction, $1.00 per ton or fraction thereof, according to tonnage rating of trucks.

Tractor and or one ton trailer, with driver, either direction 2.00

Tractor and or trailer, with driver, $1.00 per ton or fraction thereof, according to tonnage rating of trailers, either direction.

Tractor with trailers and driver, 1.00
Per aggregate ton or fraction thereof, according to tonnage rating of trailers, either direction.

All other vehicles, implements, machines of any nature or description whatsoever, $2.00 per dead weight ton, either direction.

That the owner or owners may in the exercise of a

proper discretion refuse to permit such road or roads to be used by any vehicle, implement or machine of any nature or description whasoever on said road or roads which may be destructive to the surface thereof.

Section 6. That any individual, individuals, corporation or corporations constructing such roadways, bridges, viaducts, fills, including the approaches thereto, across said Bay Biscayne, or between islands now existing or hereafter to be constructed, is or are hereby granted for a period of twenty-five (25) years from the date of issuance of the aforesaid certificate of the Secretary of the State of Florida, the exclusive right and franchise to maintain and operate bus or jitney transportation lines for the transportation and hauling of people and freight for hire over and across such roadways, bridges, viaducts and fills, including the approaches thereto, constructed in accordance with the provisions of this Act, and they are hereby granted the right and privilege to delegate such exclusive right or franchise to any bus line, bus lines, transportation company, or transportation companies engaged in such or similar business.

Section 7. That the assessments for taxation per mile of any part of any such roadway, roadways, bridges, viaducts and fills, including the approaches thereto, constructed by any such individual, individuals, corporation or corporations, over, across or through said waters of Bay Biscayne, as contemplated in this Act, whether constructed or maintained in connection with a toll bridge or other bridge, for passage of pedestrians and vehicles, or either, shall not exceed the average per mile assessment for taxation of any other roadway or roadways located on land in said Dade County, nor shall the assess-

ment per mile of any such roadway as contemplated by this Act be increased by reason of the construction and maintenance of the part thereof extending over or through the said waters of Bay Biscayne, notwithstanding the extra or disproportionate expense of the construction thereof above and beyond the expense of constructing such roadway or roadways upon land.

Section 8. That all laws and parts of laws in conflict with this Act be, and the same are hereby repealed.

Section 9. That the provisions of this Act shall take effect from and after its passage and approval by the Governor or its becoming a law without the approval of the Governor.

STATE OF FLORIDA
OFFICE OF SECRETARY OF STATE.

I, H. Clay Crawford, Secretary of State of the State of Florida, do hereby certify that the above and foregoing is a true and correct copy of AN ACT to encourage and authorize the construction, maintenance and operation of roadways, bridges, viaducts and fills, including approaches thereto, over, across or through the waters and submerged lands of that part of Bay Biscayne lying North of the existing County Causeway, connecting Miami and Miami Beach, in Dade County, Florida; to maintain and operate the same as toll roads, regulating the operation thereof and prescribing tolls to be collected thereon; granting the right to construct thereon concrete arches, trestles, draw-bridges, docks, wharves, toll houses, toll

gates, depots and other necessary buildings; providing for the purchase of said roadways, when completed, by the County of Dade; and providing for a certificate of authority from the Secretary of State;

passed by the Legislature of Florida, Session 1925, as approved by the Governor and filed in this office;

Given under my hand and the Great Seal of the State of Florida at Tallahassee, the Capitol, this the fourth day of June, A. D. 1925.

H. CLAY CRAWOFRD
Secretary of State.

(Petitioner's Exhibit "B")

CHAPTER 21743—(No. 109).
COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 13

AN ACT to Amend Section 347.08 of the "Florida Statutes, 1941," Authorizing the State Railroad Commission to Regulate the operation of and Fix Tolls for Certain Toll Bridges and Causeways in the tSate of Florida.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

Section 1. That Section 347.08 of the Florida Statutes of 1941 entitled "Railroad Commission Authorized to Fix

Tolls and Regulate Operations of Certain Toll Bridges and Causeways More than Three and One-Half Miles in Length" be and the same is hereby amended so that it shall read as follows:

347.08. RAILROAD COMMISSION AUTHORIZED TO FIX TOLLS AND REGULATE OPERATIONS OF CERTAIN TOLL BRIDGES AND CAUSEWAYS. The Railroad Commission of the State of Florida may fix and regulate tolls, charges, uses and hours for keeping open for traffic, of any toll bridge or causeway which is now constructed, built, or that may hereafter be constructed or built over and across any river, bay, bayou or other body of water, in the State of Florida, and make rules and regulations respecting the same; provided, however, that the maximum rates, charges or tolls on any said toll bridge or causeway not exceeding, including the approaches thereto, four and one-half miles in length, shall not exceed ten cents for foot passengers; ten cents for bicycles ridden by one person and ten cents for each additional passenger; twenty-five cents for each motorcycle ridden by one person and ten cents for each additional passenger; twenty-five cents for horse and rider; fifty cents for single team and driver and ten cents for each additional passenger; seventy-five cents for double team and driver and ten cents for each additional passenger; seventy-five cents for automobile and driver and ten cents for each additional passenger; automobile truck and driver not to exceed double the rate for automobiles and ten cents for each additional passenger; loose driven horses and stock cattle, twenty cents per head; and provided further, that the maximum rates, charges or tolls on any said toll bridge or causeway or bridges which, including the approaches thereto, is more than four and

one-half miles and not exceeding six miles in length, shall not exceed ten cents for foot passengers; ten cents for bicycles ridden by one person and ten cents for each additional passenger; twenty-five cents for each motorcycle ridden by one person and ten cents for each additional passenger; fifty cents for horse and rider; fifty cents for single team and driver and ten cents for each additional passenger; seventy-five cents for double team and driver and ten cents for each additional passenger; one dollar for automobile and driver and ten cents for each additional passenger; automobile truck and driver not to exceed the double rate for automobiles; loose driven horses and stock cattle twenty-five cents per head; and provided, further, that the maximum rates, charges or tolls on any said toll bridge or causeway or bridges which, including the approaches thereto, is more than six miles in length, shall not exceed ten cents for foot passengers; ten cets for bncycles ridden by one person and ten cents for each additional passenger; fifty cents for each motorcycle ridden by one person and ten cents for each additional passenger; fifty cents for horse and rider, seventy-five cents for single team and driver and ten cents for each additional passenger; one dollar for double team and driver and ten cents for each additional passenger, one dollar twenty-five cents for automobile and driver and ten cents for each additional passenger; automobile truck and driver not to exceed double the rate for automobiles; loose driven horses and stock cattle, twenty-five cents per head;

Provided further that in regulating tolls and charges for the use of such toll bridges or causeway not exceeding, including the approaches thereto, four and a half

miles in length, the Railroad Commission shall also fix reasonable rates to be charged: (1) Busses for the use of such toll bridge or causeway, and (2) for annual passes, emblems or permits for passenger automobiles and for trucks over such toll bridge or causeway for persons, firms or corporations desiring the right to the unlimited annual use of such toll bridge or causeway. Nothing in this Act shall be construed to interfere with the rights of any person entitled to free passage over any bridge or causeway by virtue of any covenant running with the land.

Provided, however, that this section shall have no application to toll bridges that may, after June 6, 1927, **have been or be constructed by any county, or any political subdivision of any county, or to any toll bridge constructed and operated under any franchise or license granted by the county commissioners of any county.**

(Petitioner's Exhibit "C")

CHAPTER 347. FERRIES, TOLL BRIDGES, DAMS, AND LOG DITCHES

347.01 County commissioners may grant license

The county commissioners of the several counties may grant leave to applicants, upon the conditions provided in this chapter, to establish ferries, toll bridges, mills and dams, and log ditches, upon and across the rivers and streams of their respective counties, which license shall

continue in force for a time to be specified therein by said board not exceeding ten years.

317.02 Notice of application

Any person desiring the benefits of Sec. 317.01 shall advertise in a newspaper published in the county wherein the privilege is to be granted, or if there be no newspaper published in said county, in a newspaper published in the adjoining or nearest county thereto; and shall also post in three conspicuous places in said county notice of his intention to apply to the couty commissioners for leave, specifying the object of his application to the commissioners aforesaid, which application shall be in writing, particularly describing the river or stream, and locality thereupon, with the width thereof, and the depth of water where he shall desire to erect or establish a mill, dam, bridge, ferry or log ditch as aforesaid.

317.03 Owner of land to have preference for ferry or toll bridge

No such license to establish a ferry or toll bridge shall be granted to any person other than the owner of the land through which the highway adjoining the ferry or toll bridge shall run, unless such owner shall consent thereto or shall neglect to apply for such license, after notice as aforesaid.

317.04 Commissioners may regulate

The board of county commissioners, when they shall grant any license to keep a ferry or toll bridge, shall

order and direct the rates of ferriage or toll which the person licensed may charge and may, from time to time thereafter during the continuance of such license, alter such rates, and they may also direct what and how many hours each day such person shall attend his ferry or bridge, which hours shall be at least from daylight till dark, and may direct how long persons desiring to be crossed may be detained.

347.05 Bond

Every person anpplying for such license for a ferry or toll bridge, shall, before the same shall be granted, give bond in a sum to be fixed by the county commissioners, not less than two hundred dollars, with such sufficient sureties as the board shall approve, conditioned to faithfully keep such bridge in good repair, or attend such ferry with such and so many safe and convenient boats, and so many men to work the same, together with such sufficient implements therefor, and to perform the duties of such ferry or toll bridge, during the several hours in each day and at such several rates as the said board shall from time to time order and direct, which bond shall be filed with the clerk of said board.

347.06 Certificate of license

Whenever an application is granted under Sec. 347.01, the clerk of the board of county commissioners shall issue his certificate under seal, specifying the privileges therein granted, for which he shall receive the fees prescribed by law for like services.

347.07 License on waters between counties

Whenever the waters over which any toll bridge or ferry may be used shall divide two counties, a license obtained in either of the counties shall be sufficient to authorize the person obtaining the same to transport and pass persons, goods, wares, and merchandise and effects to and from either side of said waters; provided, that the rate of toll be fixed by the county commissioners of each county.

347.08 Railroad commission authorized to fix tolls and regulate operation of certain toll bridges and causeways more than three and one-half miles in length

The railroad commission of the State of Florida may fix and regulate tolls, charges, uses and hours for keeping open for traffic, of any toll bridge or causeway which, including the approaches thereto, is more than three and one-half miles in length now constructed, built, or that may hereafter be constructed or built over and across any river, bay, bayou or other body of water, in the State of Florida, and make rules and regulations respecting the same; provided, however, that the maximum rates, charges or tolls on any said toll bridge or causeway not exceeding, including the approaches thereto, four and one-half miles in length, shall not exceed ten cents for foot passengers; ten cents for bicycles ridden by one person and ten cents for each additioal passenger; twenty-five cents for each mortorcycle ridden by one person and ten cents for each additioal passenger; twenty-five cents for horse and rider; fifty cents for single team and driver

and ten cents for each additional passenger; seventy-five cents for double team and driver and ten cents for each additional passenger; seventy-five cents for automobile and driver and ten cents for each additional passenger; automobile truck and driver not to exceed double the rate for automobiles and ten cents for each additional passenger; loose driven horses and stock cattle, twenty cents per head; and provided further, that the maximum rates, charges or tolls on any said toll bridge or causeway or bridges which, including the approaches thereto, is more than four and one-half miles and not exceeding six miles in length, shall not exceed ten cents for foot passengers; ten cents for bicycles ridden by one person and ten cents for each additional passenger; twenty-five cents for each motorcycle ridden by one person and ten cents for each additional passenger; fifty cents for horse and rider; fifty cents for single team and driver and ten cents for each additional passenger; seventy-five cents for double team and driver and ten cents for each additional passenger; one dollar for automobile and driver and ten cents for each additional passenger; automobile truck and driver not to exceed the double rate for automobiles; loose driven horses and stock cattle, twenty-five cents per head; and provided further, that the maximum rates, charges, or tolls on any said toll bridge or causeway or bridges which, including the approaches thereto, is more than six miles in length, shall not exceed ten cents for foot passengers; ten cents for bicycles ridden by one person and ten cents for each additional passenger; fifty cents for each motorcycle ridden by one person and ten cents for each additional passenger; fifty cents for horse and rider; seventy-five cents for single team and driver and ten cents for each additional passenger; one dollar

for double team and driver and ten cents for each additional passenger; one dollar twenty-five cents for automobile and driver and ten cents for each additional passenger; automobile truck and driver not to exceed double the rate for automobiles; loose driven horses and stock cattle, twenty-five cents per head; Provided, however, that this section shall have no application to any bridge or bridges now or hereafter constructed or operated when the maximum rate or rates or toll are fixed in the act or law granting the franchise to construct and operate the same, or to toll bridges that may, after June 6, 1927, have been or be constructed by any county, or any political subdivision of any county, or to any toll bridges to be constructed and operated under any franchise or license granted by the county commissioners of any county.

347.09 Same; driven livestock; excursion rates

All loose driven horses and stock cattle crossing said bridge shall, at all times, be under full control of proper drivers to prevent stampeding and keeping them within a walk on said bridge, and no lot, at one time driving, shall exceed fifty in number. They shall also be crossed late in the evening or early in the morning at such an hour as shall be prescribed by the agent or owner of said toll bridge, causeway or bridges, so as not to interfere with the day traffic.

The owner of such toll bridge may establish commutation or excursion rates lower than the regular schedule of prices prescribed in Sec. 347.08.

347.10 Same; exercise of powers by railroad commission

The railroad commission shall have and exercise all the powers respecting the enforcement of its orders, rules and regulations made under the provisions of Secs. 347.08-347.10 which it has or may by law exercise, for the enforcement of its orders, rules and regulations respecting railroads.

347.11 Franchise for certain bridges, etc. to be granted by railroad commission

The granting power and control, for the purpose of enfranchising persons, firms and corporations, public ad private, to build, construct, establish, operate and maintain bridges, causeways, tunnels, toll highways and ferries upon, over, across, or under all bays, inlets, bayous, lagoons, and sounds, and the beds ad bottoms thereof, classifiable as state lands, submerged or otherwise, or over lands or waters where the grantee shall acquire the title or proprietary rights therein by the exercise of the power of eminent domain or otherwise, bordering on and connecting with the Gulf of Mexico, and making up one continuous expanse and body of water or land and water, and lying within the territorial limits of more than one county of this state, is vested in the railroad commission of the State of Florida, to be exercised upon the terms and conditions hereinafter provided; except none of the provisions of Secs. 347.11-347.18 shall apply to any ferries, toll bridges or tunnels operating or to be operated under, on or above any of the rivers in the State of Florida.

347.12 Terms of franchise granted by railroad commission

The franchise rights provided for in Sec. 347.11 shall

be granted, to continue in force for a period of fifty years, and shall be an exclusive franchise over, under or across the body of water covered by said franchise for a distance of three and one-half miles along the shore line of said body of water in each direction from each terminus of the bridge, causeway, tunnel, toll highway or ferry, as the case may be; and any person, firm or corporation which shall be granted a franchise as contemplated in Secs. 347.11-347.18 for either a bridge, causeway, tunnel, toll highway or ferry over, under or across any body of water, as described in said sections, shall be entitled to the exclusive right to a franchise over, under, or across said body of water within the limits above described for any of the other purposes or means of transportation, as described in Sec. 347.11 subject only to the power and control of the railroad commission of the State of Florida to determine the necessity and public convenience for the additional means of transportation.

347.13 Additional rights to franchise holders under former act

There is granted to and conferred upon all persons to whom franchises were granted under chapter 13884, acts 1929, all of the additional rights, powers and privileges enumerated in Sec. 347.12, the same as though the said additional rights, powers and privileges were included in said chapter 13884 and in the franchises heretofore granted thereunder.

347.11 Conditions upon which franchise is to issue; regulation by railroad commission; free passage; eminent domain

Such franchise rights may be given by said commission after application therefor in writing, upon the following conditions:

(1) If the application relates to navigable water, such applicant must exhibit to the commission with his application, the approval thereof from the department of the federal government exercising the dominant power of the congress of the United States of America, over the navigable waters of the said United States, and in the absence thereof said application shall not be received nor admitted to file.

(2) The intention to make such application shall be advertised in a newspaper of general circulation published in each of the counties wherein the privilege is to be granted, for a period of four full weeks, once a week prior to presenting same, or if there be no newspaper published in said counties, or either of them, then such advertisement shall be circulated by posting in three conspicuous places therein, one of which shall be at the front door of the court house of the county, four full weeks prior to presenting same.

(3) The contents of the notices declaring such intention shall describe the locality wherein the privilege is sought, and exactly the nature, extent, and character of such privilege.

(4) The railroad commission of the State of Florida, before making any award of franchise rights under Secs. 347.11-347.18, shall give written notice to the board of county commissioners of each county affected, through the chairman of such board, of the pendency of any ap-

plication hereunder, at least four weeks in advance of the commission's final action thereon.

(5) The grantee of such privilege, as conditions precedent to the effectiveness of the grant, shall furnish to the commission one bond in a sum of not less than five thousand dollars and not more than fifteen thousand dollars, to be approved by said commission, conditioned for the actual beginning of operations in the exercise of the privileges granted, within not less than twelve months from the time of the granting of same; and shall furnish a like bond in a sum of not less than five per cent and not more than ten per cent of the total estimated costs of construction and equipment of its works, and conditioned for the completion and equipment of such works, within such time as may be prescribed in the discretion of the commission, but not to be longer than five years, provided that the time element in the condition of this second bond may be in the discretion of the commission for good cause extended. The bonds in this paragraph provided for shall be made payable to the governor of the State of Florida for the use and benefit of the state road department and all monies collected thereunder shall be paid to the state treasurer of the State of Florida for the use of the said state road department.

(6) The said railroad commission shall have control of the use and enjoyment of such privilege or privileges, by the grantee thereof, in the fixing and prescribing of any tolls to be charged thereunder; and shall have the power to make and shall make rules and regulations, controlling and governing the grantee, in the use of the fran-

chise rights, in Secs. 347.11-347.18 contemplated, so as to safeguard, promote, and protect the public weal and interest involved thereunder; provided that no tolls shall be charged or collected for the use of any toll highways or ferries contemplated under said sections by troops, federal or state, fire departments, police officers in performance of their official duties, or emergency ambulances.

(7) The grantee of any franchise under said sections shall have the right to exercise the power of eminent domain, in acquiring approaches to its structure of ferries, from shore lines, and to connect with streets or public roads, to the same extent and in the same manner, as now exists with respect to the establishment of state or county highways.

(8) Applications for franchise under said sections shall be considered by the railroad commission of the State of Florida and determined in the respective order or priority in which they are filed, and in the awarding thereof by said commission, the interests, rights, accommodation and public convenience of the localities and communities involved, shall be adequately protected and safeguarded; provided, however, that no franchise shall ever be granted under the provisions of said sections, the exercise of which woud cause the lowering by any department of the United States government, of the classification of any port in the State of Florida.

347.15 Due process of law required in preemption

All easements and proprietary rights, of the waters and lands contemplated in Secs. 347.11-347.18 incident to

riparian holdings, and vested in private owners, are reserved in the owners thereof, to be preempted only after due process of law.

347.16 Termination of franchise

The franchise rights contemplated by Secs. 347.11-347.18, when granted within the purview hereof, shall continue in such grantee, his personal representatives, successors or assigns for the full term or period thereof, unless otherwise terminated by operation of law; and if, before its expiration, legal termination shall occur (or upon its expiration) then the properties, construction and equipment and all easement right of the grantee shall pass to and become the properties of the State of Florida for the use and benefit of the state road department.

347.17 Powers of railroad commission

For the purpose of exercising the control and custody, contemplated under Secs. 347.11-347.18, the railroad commission of the State of Florida is vested with all its existing powers, judicial and otherwise, such power to be exercised in conformity with existing laws, for the enforcement and administration thereof.

347.18 Unauthorized bridges, etc., prohibited

No person, firm or corporation, public or private, not authorized by the provisions of Secs. 347.11-347.18 shall be permitted to build, construct, establish, operate or maintain, any bridge, causeway, tunnel, toll highway or

ferry, upon, across, over or under the lands or waters contemplated by or within the purview of said sections except that none of the provisions of said sections shall interfere with any existing toll bridge franchise.

347.19 Militia and clergymen exempt from paying tolls

Any person belonging to the military forces of the state going to or returning from any parade, encampment, drill, muster, or other military service or meeting which he may be required to attend, if he is in uniform, presents an order for duty, or such other proper identification to be prescribed by the adjutant general, and all persons driving automobiles or other vehicles belonging to the military department of the state of Florida used for transporting military personnel, stores and property, when properly identified shall, together with any such conveyance and military personnel and property of the state in his charge, be allowed to pass free through all toll gates and over all toll bridges and ferries in this state.

Clergymen and preachers of the gospel shall be allowed to pass free over all toll bridges and ferries in this state.

A copy of this section shall be posted at each toll bridge and on each ferry.

347.20 Vested rights not impaired

Nothing in this chapter shall affect or impair any right or privilege belonging to any individual or cor-

poration by virtue of any law of this state.

347.21 County commissioners to grant franchise

The county commissioners of any county in this state, whenever it shall have been made to appear to them that the convenience of the public requires the maintenance of a ferry for teams and passengers operated on regular schedules at frequent intervals across any river between any two points on opposite sides of the river in the same county, shall by resolution, grant a leave, license and franchise for the establishment, maintenance and operation of such ferry by a grantee or grantees named in the resolution, from a street or a public road on one side of the river to a street or a public road on the other side of the river; which leave, license and franchise shall vest in and be enjoyed by the grantee or grantees and the heirs, successors, and assigns thereof for the terms and on the conditions as in Secs. 347.22-347.25 provided. The word "grantee," as used in said sections, shall include the heirs, successors and assign of the grantee, and the word "franchise" shall include leave, license, and all rights and privileges pertaining to ferries.

347.22 Condition under which franchise granted

Such leave, license and franchise, for the maintenance and operation of such ferry as provided in Sec. 347.21, shall be given and granted by resolution upon the following terms and conditions:

(1) The grantee of such leave, license and franchise, shall before the taking effect of such leave, license

and franchise, give to the county a good and sufficient bond in the sum of five thousand dollars, to be approved by the county commissioners, conditioned for the establishment, maintenance and operation of a ferry of character to meet the reasonable necessities of the public on regular schedule at such frequent intervals from each side of the river with a ferry boat suitable and safe for the transportation of passengers, vehicles and teams during the hours and on the schedules as fixed by the provisions of the resolution of the board of county commissioners granting the franchise. The county commissioners shall in and by the resolution giving and granting such franchise fix the schedule to be observed and the rate to be charged for ferriage, and the character and capacity of boats, and make such other regulations as may to them appear to be reasonable, to be in force and effect until changed as hereinafter provided.

(2) Such franchise, unless adjudged by the courts forfeited for failure to comply with the terms and conditions thereof, shall run and continue for the full term of and period of fifteen years, and thereafter until the county commissioners shall have terminated the said franchise in the manner herein provided. No leave, license or franchise shall be granted to any person for the operation of any ferry across such river from or to any point within one mile of either terminus of such ferry as fixed by the resolution granting the franchise, and no other ferry shall be established or maintained within one mile thereof; and no such leave, license or franchise shall be so given or granted as to impair or depreciate the value of any vested right or privilege of any person or corporation operating at the time of the

passage of this chapter, a ferry for the transportation of passengers and teams at frequent and regular intervals across a river under the provisions of any resolutions of a board of county commissioners, granted under the provisions of existing laws.

(3) At the end of the third year after granting such leave, license or franchise, and at the end of each period of three years thereafter, the county commissioners and the grantee shall each have the right, by having given notice of the intention so to do thirty days prior to any such recurring period of three years, to have arbitrated with the other party any question or questions as to the reasonableness of any rate or rates allowed or charged, or as to the character and reasonableness or frequency of the service required or given, or as to any other matter or thing pertaining to the maintenance or operation of such ferry. For the arbitration of any such question or questions, the county commissioners shall name one arbitrator, and the grantee of the franchise shall name the other, and the two arbitrators shall, if possible, after investigation, decide the question or questions submitted to them, and render to the county commissioners and to the grantee a written decision signed by them. If the two arbitrators so named shall be unable to agree as to a proper decision on any question or questions, they shall mutually agree upon a third disinterested party, who shall investigate the contested question or questions, and the finding of two of the arbitrators shall then be a decision of the arbitrators. All parties shall be bound, and shall abide by and carry out for the ensuing three years the decision of the arbitrators. The county commissioners and the grantee of such franchise

shall have the right at any time, without arbitration, to make by resolution of the county commissioners, approved by the grantee, any arrangement that they may deem mutually advantageous to all concerned affecting such ferry service, subject, however, to subsequent change by arbitration at the times and as herein provided.

(4) The county commissioners of any county, wherein such ferry shall have been operated as herein provided, shall have the right to have submitted to the voters of the county, at the general election next preceding the expiration of the said term of fifteen years, the question as to whether or not the county commissioners shall purchase the property used and operate the ferry, and if the majority of the voters voting on the subject shall have voted for the purchase and operation of the ferry by the county, then the county commissioners and the grantee of the franchise shall each name an arbitrator, and the two arbitrators so named shall name a third, a disinterested person of high standing and integrity, and the three arbitrators, or two of them, if the three cannot agree, shall, after a thorough investigation, fix the amount to be paid by the county to the grantee; and the county commissioners shall thereupon pay to the grantee the amount fixed by the arbitrators, or a majority of them, and shall receive from the grantee a conveyance of all its property used for ferry purposes; and the county commissioners shall operate such ferry so long as its operation by them shall appear practicable, and the grantee of the franchise shall not thereafter, so long as the said ferry shall be operated by the county, operate any such ferry, and all

rights of the grantee to operate such ferry shall, during the time of the operation thereof by the county, be withdrawn.

Should the electors of the county at such election fail to approve the purchase and operation of such ferry, or should the county commissioners for any reason fail to make such purchase, the grantee shall have the right to continue the operation of such ferry with all the rights hereby granted and subject to all of the provisions of this chapter as to arbitration of questions of service, charges, etc., for an additional term of ten years, and until the county shall, by vote of its electors, have determined to purchase and operate such ferry, and shall have paid to the grantee the amount fixed by arbitration in the manner above provided.

347.23 No person to maintain ferry unless authorized

No person not authorized under the provisions of this chapter shall maintain any ferry for transporting persons or property for profit across any river from any point within one mile of a terminus of any ferry maintained under the provisions of this chapter to any point within one mile of such terminus.

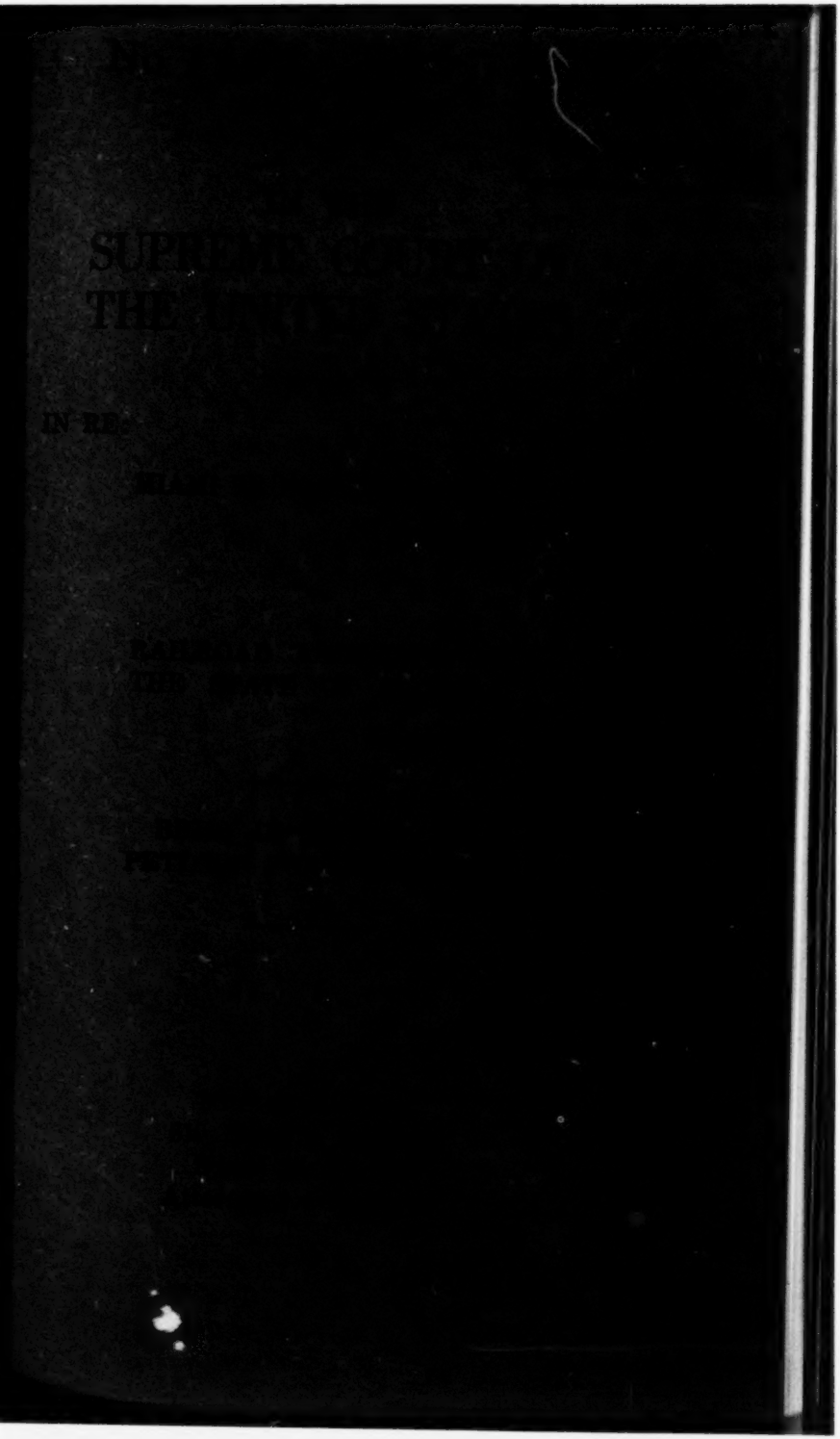
347.24 Transporting persons for hire within one mile of ferry; penalty

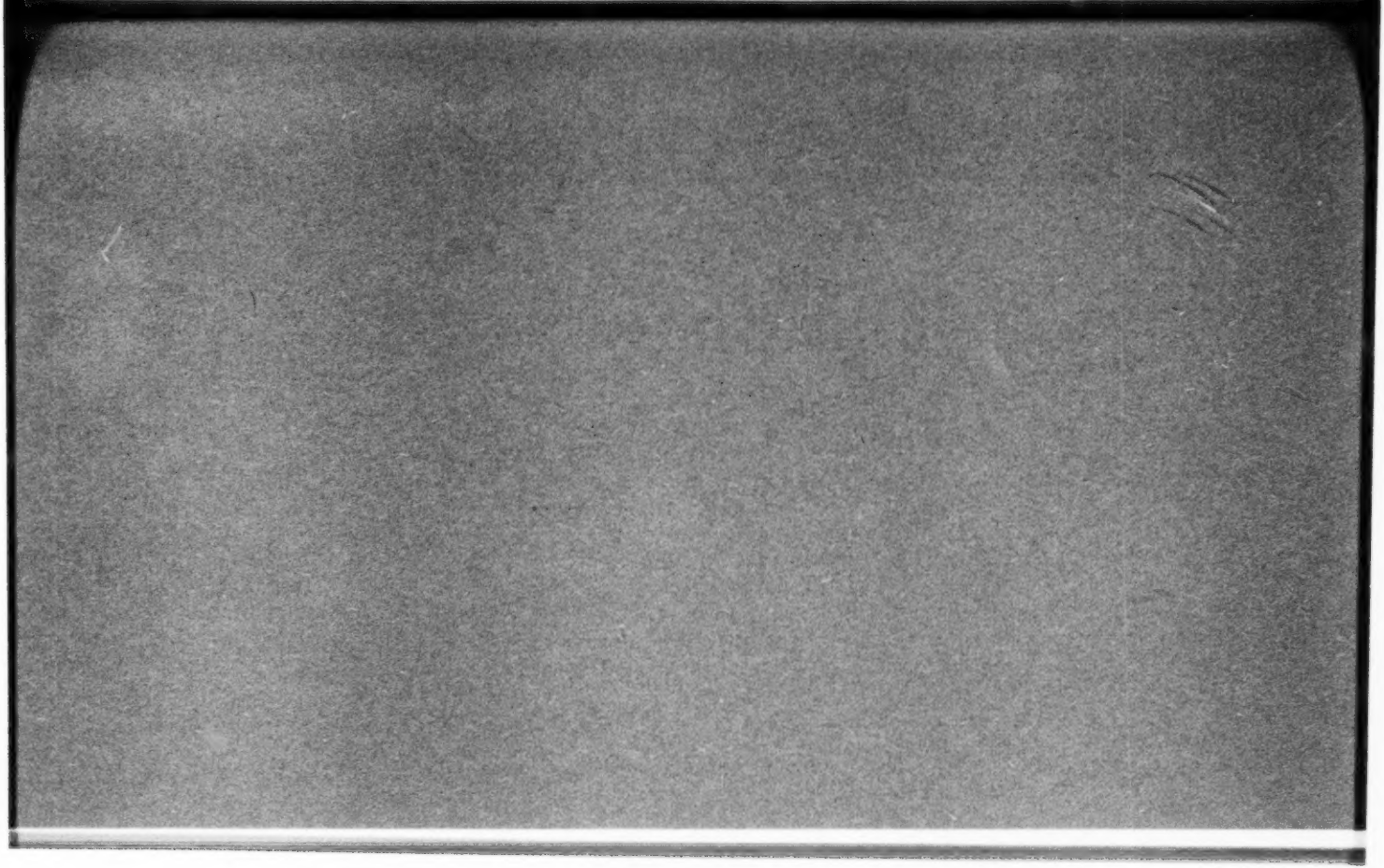
Any person who shall for profit or hire transport across any river from any point within one mile of any terminus of any ferry maintained under the provisions of law to any point within one mile of a terminus of any

such ferry, unless duly authorized by law so to do, shall be punished by fine not exceeding twenty dollars for the first offense and by fine not exceeding fifty dollars, or imprisonment not exceeding five days for each subsequent offense.

347.25 Maintaining illegal ferries; penalty

Whoever maintains any ferry for transporting across any river, stream or lake, persons, goods, chattels or effects for profit or hire, unless duly authorized according to law, shall be punished by fine not exceeding twenty dollars. When any offense mentioned in this section is committed on streams dividing counties the offender may be prosecuted in either county.





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IN THE
SUPREME COURT OF THE UNITED STATES

IN RE:

MIAMI BRIDGE COMPANY,
Petitioner,

vs.

RAILROAD COMMISSION OF THE STATE OF FLORIDA,
Respondent.

Brief of Mitchell D. Price in Support of Petition for Certiorari.

The judgment from which relief is sought became final on January 26, 1945, at the time the Motion for Re-hearing was denied, and has not been reported either in the Southern Reporter or in the Florida Reports within the knowledge of the petitioner, but a complete copy of said judgment is shown in the Transcript of the Record filed herein, on page 50. A copy of the order made by the Railroad Commission on January 17, 1944, is shown on page 39 of the Transcript filed herein, and has not been otherwise reported.

CONCISE STATEMENT OF THE CASE AND OF THE GROUNDS UPON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

After long litigation instigated by THE MIAMI BEACH RAILWAY COMPANY, a bus operating corporation, against the MIAMI BRIDGE COMPANY, petitioner herein, a decision was handed down by the Supreme Court of the State of Florida (reported in 12 Southern Reporter (2), page 438) which adjudicated and determined that the petitioner herein is the owner and holder of the Venetian Causeway, a toll bridge connecting the City of Miami and the City of Miami Beach, and that the Miami Bridge Company had the right to operate said bridge and charge reasonable compensation for the right of passage. Thereafter, the Legislature of the State of Florida at its 1943 Session, passed an Act known as Chapter 21,743 entitled,

> "An Act to Amend Section 347.08 of the Florida Statutes 1941, authorizing the State Railroad Commission to regulate the operation of and fix tolls **for certain bridges and causeways** in the State of Florida."

The chapter amended, contained twenty-five sections beginning with Section 347.01 and terminating with Section 347.25, and the amendment aforesaid did not change or in any way alter any section in said Chapter, save and except Section 347.08; that said Chapter 347 contained a section reading as follows:

> "Section 347.20. **Vested Rights Not Impaired.** Nothing in this chapter **shall affect or impair any right or privilege** belonging to any individual or corporation by virtue of any law of this State."

The petitioner herein acquired title to said Venetian

Causeway under Chapter 10,497, Special Acts, enacted by the Legislature of Florida in 1925. Said act in substance provided that if any individual or corporation then or thereafter created would construct a bridge or causeway over the waters and submerged lands of that part of Biscayne Bay lying north of the existing causeway connecting Miami and Miami Beach which would cost approximately one and one-half million dollars, that the person or corporation so constructing said bridge **should have the right to operate same as a toll bridge or toll causeway and to collect toll for the use thereof.** For the protection of the public and to avoid unjust discrimination, the Legislature of the State of Florida placed a maximum rate which could be charged by the person or corporation so constructing said causeway for the use of said causeway, which provided a rate of fifty cents (50c) for a one-way passage of any bus (including the driver) across said causeway, and five cents for each passenger hauled upon said bus. The pleadings in the case show that a bridge was constructed in conformity with said Act and that the Miami Bridge Company is the present owner and holder of said causeway, and its ownership and authority to collect reasonable toll has been adjudicated and determined by the Supreme Court of the State of Florida in the case above cited. The pleadings also show that the Miami Bridge Company, which has been the owner of the Venetian Causeway for many years, **has never charged a toll rate in excess of the maximum fixed by Chapter 10,497.** For the convenience of the Court, a copy of Chapter 10,497, marked Exhibit "A," is attached to the petition filed herein.

On or about the 15th of January, 1944, The Miami

Beach Railway Company, **hereinafter called the bus company,** filed a petition (Tr. p. 14) with the Railroad Commission of Florida requesting said Railroad Commission to assume control of said Venetian Causeway. The record shows that in 1943 there were three public bridges or free causeways across Biscayne Bay, one of which was south of the Venetian Causeway, and the other two north of said causeway; that the bus company had for many years used the free County Causeway immediately south of the Venetian Causeway in the operation of its bus line in carrying passengers between the City of Miami and Miami Beach, and that it charged a fare of 10c for each passenger hauled one-way or 20c for a round trip. The buses operated by the Miami Beach Railway Company are capable of carrying from forty to fifty persons, and when loaded, weigh between ten and fifteen thousand pounds. Each bus operated by the Railway Company, when filled, would gross said company from $4.00 to $5.00 for each one-way passage, but it objected strenuously to paying one-twentieth of that amount as toll for the use of petitioner's expensive bridge. Had the Bridge Company charged the full statutory maximum rate (Ch. 10,497), it could have legally collected $3.00 toll upon a full bus instead of a petty 25c.

The railway (bus operating) company in the petition filed by it with the Railroad Commission, expressly alleged that the Bridge Company made a charge against it of 50c **per round trip** for each and every bus operated over the causeway, and that such charge was "unreasonable, arbitrary, excessive and extortionate." It does not charge that the Bridge Company discriminated against it; neither is any insinuation made that there was any

"**unjust**" discrimination. The only place where the word discrimination is referred to in the petition filed by the bus company, is in its prayer for relief. It prays that the Railroad Commission "prescribe a just, reasonable, non-preferential and **nondiscriminatory** rate for buses using said Venetian Causeway comparable to the rates charged by said Miami Bridge Company for the use of said Venetian Way by automobiles carrying passengers."

In the bus company's petition and in the other pleadings it is clearly shown there was a difference between the service rendered to the bus company and the service rndered to the Venetian Short Ways Inc., who operated a line of automobiles of ordinary size, carrying five or six passengers. There was a difference in size, a difference in passenger carrying capacity and a great difference in wear and tear upon the bridge. The same rate could not fairly be imposed upon both vehicles, any more than a common carrier could be required to ship an elephant for the same rate that they would charge for shipping a dog.

The Supreme Court of the State of Florida seem to have based their entire decision upon the question of discrimination, and yet **no discrimination is shown between two or more patrons for the rendition of similar services,** and the Bridge Company in its petition for writ of certorari expressly offered to give the bus company the same rate which they gave to the Venetian Short Way after January 1, 1945, when their contract with such company expired, **if they would operate vehicles of the same kind** (Tr. page 7).

The Supreme Court has quoted a provision of the Florida Constitution relating to **"unjust"** discrimination and the prevention thereof as applied to common carriers, and also as to "unjust" discrimination exercised by other public utilities, but, there is absolutely nothing in the record, except the quotation from the Florida Constitution used by the Court, which charges or in any way intimates that there has been any "unjust" discrimination (Tr. pages 15 and 50).

In the consideration of this case, **there is no denial that a valid contract exists between the State of Florida and the petitioner** (Tr. page 52) which not only recognizes the title and ownership of the petitioner, but the petitioner's right to operate the Venetian Causeway and charge reasonable toll for the use thereof; but, it is contended that the "unreasonable, arbitrary, excessive and extortionate rate" charged the bus company for the passage of a forty or fifty passenger bus when compared with the lesser rate charged for the operation of a five passenger automobile carrying passengers for hire, was sufficient to authorize the Legislature, relying upon the authority of the invisible and questionable police power, to pass an act which, **if applicable, would have directly impaired a validly executed and judicially approved contract** made between the State of Florida and the petitioner herein. The Supreme Court of Florida seems to have considered the bare possibility that there might be some unjust discrimination, that public safety, public health, public morals or the public welfare might at some time in the future and in some unforeseen manner be jeopardized, was sufficient to warrant the Legislature of the State of Florida in trampling upon the Federal Constitution.

It is our contention, however, that **the Legislature never intended the Act to affect the Venetian Causeway** or else they would have repealed or modified Section 347.20 of Chapter 347, Florida Statutes 1941 Compilation, which section restricted and controlled and prohibited the passage of Chapter 21,743 from impairing the validity of petitioner's contract.

The petitioner claims that this court has jurisdiction of the cause because of the fact that the Legislature of the State of Florida in passing Chapter 21,743, if it intended that said Chapter should apply to the bridge owned by the petitioner herein, has violated Section X of Article I of the Constitution of the United States by impairing a valid contract, and also the Fourteenth Amendment to the Constitution of the United States by depriving the petitioner of property without due process of law, and that the court erred in holding that Chapter 21,743 did apply to the bridge owned by the petitioner herein.

REASONS RELIED UPON TO WARRANT ISSUANCE OF WRIT AND SPECIFICATION OF ASSIGNED ERRORS WHICH WILL BE URGED BY THE PETITIONER.

The petitioner relies upon the following constitutional grounds for the issuance of a Writ of Certiorari:

1. The judgment and opinion of the Supreme Court of Florida deprives the petitioner, its stockholders and bondholders of vested rights (property), without consideration and without due process of law, and in direct violation of Section 347.20, Laws of Florida 1941 Com-

pilation and the 14th Amendment to the Constitution of the United States. (Plea No. 2, Tr. page 20.)

2. The passage of Chapter 21,743, held applicable to the Venetian Causeway by the Supreme Court of the State of Florida, impairs the obligations of a judicially validated contract between the State of Florida and the petitioner herein in direct violation of Section 10, Article 1 of the Constitution of the United States (Plea No. 3, Tr. page 23.)

The Court erred in holding that the record showed any cause or legal excuse sufficient to warrant the application or invocation of the police power of the State of Florida to evade the sacred prohibition of Section 10, Article 1 of the Federal Constitution,

> "No State shall * * * pass any * * * law impairing the obligation of contracts."

The police power should be exercised with great caution and only **when it is necessary** for the protection of the public against some act or deed that is or will probably be detrimental to public health, public safety, public morals or public welfare. No allegation in the pleadings even intimates that such a necessity or emergency existed at the time Chapter 21,743 was enacted or at the time the Act was construed by the Supreme Court of the State of Florida.

Several supplemental questions are necessarily presented:

First, Did the Supreme Court of the State of Florida

have jurisdiction of the cause?

Second, Did the Supreme Court of said State hand down a final judgment or decree construing or finally determining any federal question?

Third, Was any discrimination shown and alleged to have been **"unjust"** sufficient to have authorized the invocation of the police power?

The Railroad Commission of the State of Florida is endowed under our laws with judicial powers (see Section 350.63). Their principal duties however, are legislative. (See Section 350.12, 1941 Compiled Statutes.) The Railroad Commission was attempting, when the petition for certiorari was filed, to exercise its **legislative,** not its **judicial** power and to fix rates to be charged as toll for the use of the Venetian Causeway. While judicial power is vested in the Railroad Commission, such judicial power is not defined in such a way that it can be definitely determined whether the Act vested it with legal or equitable jurisdiction. The statute does not make any provision for the entry of an appeal in Chancery or for the suing out of a writ of error at law. A writ of prohibition would not lie to restrain the Railroad Commission from exercising its legislative functions. The Supreme Court of the State of Florida in the case of State vs. Railroad Commissioners, 79 Fla. 526, 84 So. 444, in paragraphs 9-11 recognized and declared the right of the Railroad Commission to make reasonable and just rates for freight and passenger traffic to be observed by railroads and common carriers, and concluded the case on page 448 by saying:

> "Such authority **is quasi legislative** and not quasi judicial in its nature, **and the common law writ of prohibition cannot be properly issued to prohibit the Railroad Commission from exercising their quasi legislative authority to prescribe just and reasonable rates of transportation to be charged by the Pensacola Electric Company in the City of Pensacola."**

Only one other remedy was available to present the issues involved to the Supreme Court of the State of Florida and that was the writ of certiorari. In the case of Greater Miami Development Corporation vs. Pinder, et al, 142 Fla. 390, 194 So. 867, the Court said:

> "It (referring to the writ of certiorari) is now employed in this State to review orders of the Railroad Commission and other administrative Boards."

Other cases showing that certiorari was a proper and the only remedy by means of which petitioner could obtain a judicial review are cited as follows: Sweat vs. Waldin, 123 Fla. 478, 167 So. 363, paragraphs 1 and 2, and in the case of Robbins Holding Company vs. Morris, 131 Fla. 205, 179 So. 404, paragraph 1, and Seaboard Airline Railway Co. vs. Wells, 100 Fla. page 1631, 131 So. 777, paragraphs 9 and 10.

The Supreme Court of the State of Florida held the petition for a writ of certiorari transferring the case from the Railroad Commission to it for consideration to be well taken, and issued the writ of certiorari. Process was served thereon upon the Florida Railroad Commis-

sion and a hearing was had before the Supreme Court of the State of Florida, at which hearing voluminous arguments and briefs were presented. Neither the attorneys representing the Railroad Commission nor the attorneys representing the bus company appearing as amici curiae questioned the jurisdiction of the Court or the propriety of the proceedings.

Second supplemental question: Did the Supreme Court of the State of Florida hand down a final judgment or decree in the certiorari proceedings construing or finally determining any federal question? (It did, Tr. 58 and 59.) In the recent case of Irving Trust Co. vs. Kaplan, reported by the Supreme Court of the State of Florida on October 31, 1944, and reported in 20 So. (2d) 351, on page 354 the Court said, in paragraphs 1-3:

> "A final judgment has been defined as one which determines and disposes of the whole merits of the cause before the Court by declaring that the plaintiff either is or is not entitled to recover by the remedy chosen **or completely and finally disposes of a branch of the cause which may be separate and distinct from other parts thereof.** See Lewisburg Bank v. Sheffey, 140 U. S. 445, 11 S. Ct. 755, 35 L. Ed. 493; Grant v. Phoenix Mut. Life Ins. Co., 106 U. S. 429, 1 S. Ct. 414, 27 L. Ed. 237."

The same doctrine has been enunciated in many federal cases.

"The denial of a writ of prohibition to prevent

> a lower court from taking jurisdiction of a controversy is final so as to be subject to review by the Supreme Court of the United States, although the original controversy is not determined." Missouri, ex rel., St. Louis, B. & M. R. Co. vs. Taylor, 266 U. S. 200, 69 L. Ed. 247.

To the same effect is the case of Mt. Vernon-Woodberry Cotton Duck Co. et al. vs. Alabama I. P. Co., 240 U. S. 28, 60 L. Ed. (U. S. Supreme) 510; Rector vs. U. S., 20 Fed. (2) 845-872. See also Winthrop Iron Co. et al. vs. Meeker, reported in 109 U. S. 180, 27 L. Ed. 898.

The third supplemental question: Was any discrimination shown **and alleged to have been unjust** sufficient to have authorized the invocation of the police power? The police power was invoked because of the allegations contained in the petition filed by the bus company with the Railroad Commission, Transcript page 14. This petition and this alone was the foundation for the discrimination referred to in the Opinion rendered by the Supreme Court and yet the word **"discrimination"** is not mentioned or referred to in said petition except in paragraph 10, which is the prayer for relief and in said prayer the railway (bus operating company) prayed for a hearing and asked the Commission to "prescribe a just, reasonable, non-preferential and non-discriminatory rate for buses using the said Venetian Way comparable to the rates charged by said Miami Bridge Company for the use of said Venetian Way by the automobiles carrying passengers for compensation of said Venetian Shortway, Inc., between the City of Miami and the City of Miami Beach, Florida." The petition does charge in paragraph

5 that the Bridge Company has been charging the bus company "an unreasonable, arbitrary, excessive and extortionate rate," to-wit: "Fifty cents **for each round trip passage**" over the expensive bridge owned by the Miami Bridge Company. By making this charge they, in effect, allege that the Legislature of the State of Florida was guilty of bad faith when they passed Chapter 10,497 in 1925 and authorized the Bridge Company to make a charge of fifty cents for each one way passage, or One Dollar per round trip for each bus operated over the Causeway, and in addition thereto Five cents for each passenger carried. The record clearly shows that no charge was made for any passenger carried and only Twenty-five cents was charged for each bus crossing the causeway **or Fifty cents per round trip.** They have alleged that the Bridge Company was charging a lesser rate per automobile for each automobile operated by Venetian Shortway, Inc., than the Bridge Company charged for the passage of a bus, and they have argued, but not alleged in their pleadings, that because of the difference so charged, the Bridge Company has been guilty of unjust discrimination. The Court will note **that the service rendered to the two corporations was entirely different,** that the petitioner herein in its petition for certiorari had offered to give the bus company the same rates after January 1, 1945, when their contract with Venetian Shortway, Inc., expired, provided the bus company would use the same kind of vehicles, that is, vehicles of the same weight and carrying capacity as those operated by the Venetian Shortway, Inc. **The service rendered was entirely different** and unjust discrimination could not be based upon it. The law upon discrimination is clearly enunciated in Volume 4 of McQuillin on Municipal Corporations, Art. 1697, on page 3589. Upon that page the

author said "discriminations are not forbidden, but only **unjust** discriminations."

> "For example, it is not an unjust discrimination to make to one patron a less rate than to another, where there exists differences in conditions affecting the expense or difficulty of performing the service which fairly justify a difference in rates."

Citing the following authorities:

> Williams v. Maysville Telephone Co., 119 Ky. 33, 82 S. W. 995; Western Union Tel. Co. v. Call Pub. Co., 44 Neb. 326, 62 N. W. 506.

In the case of Western Union Telegraph Company vs. Call Publishing Company, a case decided by this Honorable Court and reported in the 181 U. S. 92, 21 Sup. Ct. 561, 45 L. Ed. 765, this Honorable Court quoted with approval the language of the trial court, which reads as follows, to-wit:

> "You are instructed that not every discrimination in rates charged by a telegraph company is unjust. **In order to constitute an unjust discrimination, there must be a difference in rates under substantially similar conditions as to service**; the rate charged must be a reasonable rate; under like conditions it must render its services to all patrons on equal terms; it must not so discriminate in its rates to different patrons as to give one an undue preference over another.

> **"It is not an undue preference to make one patron a less rate than another where exist differences in conditions affecting the expense or difficulty in performing the services which fairly justify the difference in rates;** and where it is shown that a difference in rate exists, but there is also a substantial difference in conditions affecting the difficulty or expense of performing the service, no cause of action arises without evidence to show that the difference in rates is disproportionate to the difference in conditions."

After adopting with approval the charges so given, this Court said:

> "No one can doubt the inherent justice of the rules thus laid down."

First ground assigned for the issuance of a writ of certiorari. The Supreme Court of the State of Florida gave full faith and credit to each and every section contained in Chapter 347, excepting Section 347.20. (Tr. pages 51, 56 and 59.) Chapter 347 is entitled, "Ferries, Toll Bridges, Dams and Log Ditches," and contains twenty-five sections. Chapter 21,743, enacted in 1943, purported to amend one section and one section only of said Chapter, to-wit, Section 347.08. The act did not purport to repeal Section 347.20 and said section is still a part of the law of Florida. In volume 59 Corpus Juris, Article 595, the author said:

> "It is a cardinal rule of construction of statutes

> **that effect must be given, if possible, to the whole statute and every part thereof."**

In support of this proposition, the compiler cites nine columns of citations, among which are the following: Amos vs. Conklin reported in 99 Fla., page 206, 126 Southern Reporter, page 283, headnote No. 10 and paragraph No. 10; State vs. Amos, 76 Fla., page 26, 79 Southern Reporter, headnote 3, page 433. The headnote in this last cited case, which was prepared by the court, reads as follows, to-wit:

> "In construing a statute, the court must give force and effect to every part of it to carry out the intent of the Legislature, if possible, such intent to be ascertained from the language in the plain and natural meaning."

Chapter 21,743 provides that all laws and parts of laws in conflict herewith be and the same are hereby repealed, but Section 347.20 is not in conflict with Section 347.08 as amended. Chapter 21,743 **is not a special act** but **is a general act** which refers to all toll bridges now constructed or that may hereafter be constructed over and across any river, bay, bayou or other body of water, not exceeding four and one-half miles in width, in the State of Florida. The purpose of Section 347.20 was to prevent any person financially interested in toll bridges previously erected being unconstitutionally deprived of vested rights in such bridges and the right to operate the same, without due process of law. The 1943 act did not purport to be a recodification of the law relating to toll bridges, yet Chapter 347 is the only chap-

ter referring to toll bridges that is shown in the index to the Florida Statutes 1941 Compilation. The Supreme Court of the State of Florida has correctly enunciated the law to the effect that the doctrine of "in pari materia" would apply in the case at bar. This doctrine properly interpreted means that all statutes passed by the same law making power upon the same subject must be considered and construed together "as though they had originally constituted one enactment." Having correctly enunciated the law, the Supreme Court of Florida immediately proceeded to depart therefrom and to adopt as valid and binding all statutes relating to toll bridges and the operation thereof, save and except Section 347.20 which was equally as much a part of Chapter 347 as Section 347.08. Section 347.20 of Chapter 347, which was ignored by the Supreme Court of the State of Florida by its misapplication of the doctrine of "in pari materia," reads as follows:

> "Vested Rights Not Impaired. Nothing in this chapter shall affect or impair any right or privilege belonging to any individual or corporation by virtue of any law of this State."

If the act passed had been a special act and had specifically defined and identified the toll bridge owned by the Miami Bridge Company, and if it had been passed after notice, as required by the Florida Constitution, then it might have been argued that Section 347.20 had been repealed by the Amendment to Section 347.08, but being a general act which amended one section only of a well defined chapter which applied to all toll bridges heretofore or hereafter erected not exceeding four and

one-half miles in length, it cannot, under any circumstances, be construed to be a repeal of Section 347.20.

The Supreme Court of the State of Florida has clearly enunciated the law to the effect that repeals by implication are not favored and will not be deemed to have been intended unless that intention is clearly manifest. See:

> State v. Gadsden County, 58 So. 232, 63 Fla. 620; Dade County v. City of Miami, 82 So. 354, 77 Fla. 786; State v. Simpson, 114 So. 542, 94 Fla. 789; Stewart v. DeLand-Lake Helen Special Road and Bridge Dist. in Volusia County, 71 So. 42, 71 Fla. 158; Middleton v. State, 76 So. 785, 74 Fla. 234.

A special Act cannot be repealed by a General Act even though the general law is inconsistent with the special, unless the general act purports to make a general revision of the whole subject.

> Sparkman v. State, 71 So. 34, 71 Fla. 210; Sanders v. Howell, 74 So. 802, 73 Fla. 563; State v. Sanders, 85 So. 333, 79 Fla. 835; American Bakeries Co. v. Haines City, 180 So. 524, 131 Fla. 790; Langston v. Lundsford, 165 So. 898, 122 Fla. 813.

Assuming then that Section 347.20 was, in 1943, and is now a part of Chapter 347, the question arises, did the passage of Chapter 21,743 and its application to the Miami Bridge Company and its causeway impair vested rights? In Corpus Juris Secundum, Vol. 16, Article 215, under the title "Constitutional Law" the author said:

> "**Rights are vested** when the right to enjoyment, present or prospective, **has become the property** of some particular person or persons as a present interest." (Citing numerous authorities.)

This Honorable Court, however, has handed down a decision in which it has defined vested rights in unmistakable language as follows, to-wit:

> "**A vested right** has been defined as 'an immediate right of present enjoyment, or a present, fixed right of future enjoyment.' Pearsall v. Great Northern R. Co., 161 U. S. 646, 16 S. Ct. 705, 713, 40 L. Ed. 838."

The definition last given has been quoted with approval by the Supreme Court of Florida in the case of Sanford v. McClelland, reported in 163 So. page 513, 121 Fla. page 253.

Chapter 21,743 purports to vest in the Railroad Commission the right, as to all bridges affected thereby, to "**fix and regulate tolls, charges, uses** and **hours for keeping open** for traffic." **This would necessarily deprive the owners of the bridge, if the act was intended to apply and did apply** to the Venetian Causeway, **of the right to regulate and fix tolls, charges, uses and hours for keeping open,** which would unquestionably be depriving the petitioner of such vested rights **based upon a valid contract in property of great value to petitioners.** To sustain the above contention it is only necessary to cite the 14th Amendment to the federal Constitution.

The Supreme Court of the United States, in the case of Liggett v. Baldrige, reported in the 278th U. S. page 104, 73rd L. Ed., page 204, commenting both on the protection of property rights and also upon the time when and under what circumstances the police power should be exercised, said:

> "A state cannot, 'under the guise of protecting the public, arbitrarily interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them'." (Citing numerous decisions from this honorable Court.)

The law as above enunciated has been clearly stated and adopted by the Supreme Court of the State of Florida. In the case of Cawthon v. Town of DeFuniak Springs et al., reported in 88 Florida, page 324, 102 So. Rep. 250, the court said:

> "5. Municipal corporations—Statute cannot authorize municipality to violate organic right of individual. A statute cannot legally authorize a municipality to violate any organic right of an individual, even though the statute in terms attempts to confer such a power."

And again in the same case, the court said:

> "* * * the Legislature can legally authorize the exercise of the police power **only for proper purposes and only to the extent that is necessary to conserve the public welfare in the premises.** A

statute cannot legally authorize a municipality to violate any organic right of an individual, even though the statute in terms attempts to confer a power that violates a private right that is secured by the Constitution. **The rights of individuals are measured by constitutional provisions** and not by statutes that in terms or by practical operation invade private rights."

In the case of Maxwell v. City of Miami, 87 Florida, page 107, 100 So. Rep. 147, our Supreme Court said:

"Municipalities are given police powers to conserve, not to impair, private rights. The organic law contains limitations upon police and municipal powers that may be sought to be conferred by statute."

The police power should never be exercised unless a public necessity exists, and can be exercised only when public health, public safety, public welfare, public morals are jeopardized or threatened.

For other Florida cases see:

State v. Yeats, 74 Fla. page 509, 77 So. Rep. 262;
Eccles v. Stone, 134, Fla. page 113, 183 So. 628;
Whitaker v. Parsons, 80 Fla. 352, 86 So. 247.

The second reason relied upon to warrant the issuance of the writ of certiorari is certainly well founded. If Chapter 21,743, Acts of 1943, applies to the Venetian Causeway, it would **"impair the obligations"** of a solemn

contract made with legislative sanction by the State of Florida with those who were ready, able and willing to spend, and who did spend, approximately one and one-half million dollars in constructing a toll bridge or causeway across Biscayne Bay North of the then existing County Causeway.

Pleas 1, 2 and 3 show that the contract tendered by the State was accepted; that the bridge was built; that the petitioner herein is now and has for many years last past been the owner, holder and operator of said causeway. The contract has been held by the Supreme Court of the State of Florida in re Miami Bridge Co. vs. Miami Beach Ry. Co., to be a valid contract. In 12 Southern Reporter, 2d Series, page 438, 152 Fla., page 458, the court, commenting on petitioner's right to collect toll, on page 443 said:

> "The presumption is that the legislative rate is a reasonable rate until after full hearing on pleadings and evidence the court determines otherwise. **The legislature, in said chapter 10497,** the defendant's franchise act, **had provided that defendant might charge a toll not exceeding fifty cents per bus,** including driver, and five cents for each passenger. This provision of the act should have been left in full force and effect until the evidence for both sides had been taken and the court's findings on the evidence had been arrived at."

In the same case, on page 446, the Supreme Court of the State of Florida said:

> **"It would then be the duty of this public utility to make a rate for the passage of buses over its causeway and bridges** which **would not be unreasonable** in the light of the court's decision."

In the opinion from which relief is now sought rendered by the Supreme Court of Florida on the 19th day of December, 1944, in reviewing the finding made by the Railroad Commission, the Court said:

> "**This Act** (referring to Chapter 10,497, Special Acts of 1925, Laws of Florida) **granted a franchise and authorized the Bridge Company to fix a rate or rates chargeable** to be paid by the petitioner (referring to The Miami Beach Railway Company) **for the passage of its buses over the bridge** operated by it and known as the Venetian Way."

The above quoted opinions in effect hold that a valid contract was made between the State of Florida and the Miami Bridge Company; that Chapter 10,497, Acts of 1925, was a valid law and that said act granted a franchise to the Miami Bridge Company and its predecessors in title, and authorized the Miami Bridge Company to fix a rate or rates to be paid by anyone operating buses over the bridge owned by the Miami Bridge Company, known as the Venetian Way. To apply Chapter 21,743 to the Venetian Causeway would be to impair the contract made between the State of Florida and the petitioner herein, and would destroy the right of the petitioner herein to fix and regulate toll charges, uses and hours for keeping open for traffic, all of which rights were vested in the petitioner herein under Chapter 10,497.

To sustain the second reason for the issuance of a writ of certiorari, it is only necessary to cite Section Ten (10) of Article I of the federal Constitution; but as this honorable Court has so clearly sustained the constitutional provisions prohibiting the impairment of contracts by state legislation, we deem it advisable to cite a few important decisions. We refer the Court to the case of Superior Water, Light & Power Co. v. Superior, reported in the 263rd U. S. Supreme Court Reports, page 125, Volume 68 L. Ed., page 204. In this case the court said:

> "The integrity of contracts—matter of high public concern—is guaranteed against action like that here disclosed by sec. 10, art. 1, of the Federal Constitution: 'No state shall . . . pass any . . . law impairing the obligation of contracts.' It was beyond the competency of the legislature to substitute an 'indeterminate permit' for rights acquired under a very clear contract. Vicksburg v. Vicksburg Waterworks Co., 206 U. S. 496, 51 L. Ed. 1155, 27 Sup. Ct. Rep. 762; Detroit United R. Co. v. Michigan, 242 U. S. 238, 253, 61 L. Ed. 268, 275, P.U.R. 1917B, 1010, 37 Sup. Ct., Rep. 87.

The Supreme Court of the State of Florida has several times held that even a constitutional amendment, which is necessarily backed by a legislative act, cannot impair the obligation of a contract to pay a bonded indebtedness by relieving a portion of the property in the taxing district, issuing said bonds from taxation by holding said property, under constitutional amendment, to be exempt from taxation.

Board of Public Instruction v. State, 145 Fla. 482,

199 So. 760; State v. Palm Beach Dist., 121 Fla. 746, 164 So. 851; State v. Boring, 121 Fla. 781, 164 So. 859.

In American Jurisprudence, Volume 12, the author in Article 399 lays down the law as follows:

"Not only private contracts are protected from impairment by state laws, but also contracts made by a state with individuals and corporations and also with other states. The legislature of a state may make contracts on many subjects which will bind it, and will bind succeeding legislatures for the time the contract has to run." Citing:

Butchers' Union S. H. & L. S. L. Co. v. Crescent City L. S. L. & S. H. Co., 111 U. S. 746, 28 L. Ed. 585, 4 S. Ct. 652.

In paragraph 406 the author said:

"It has become the established law that a legislative enactment, in the ordinary form of a statute, may contain provisions which, when accepted as the basis of action by individuals or corporations, become contracts between them and the state within the protection of the clause of the Federal Constitution forbidding impairment of contract obligations; and when such a right has arisen, the repeal of the statute does not affect the right or an action for its enforcement."

Under paragraph 406, page 39, the author said:

> "Where, however, **the exclusive power to fix rates within a certain maximum is also conferred on the recipient of the franchise, a subsequent attempt by the state to fix such rates is invalid as an impairment of the obligation of a contract.**"
>
> Citing:
>
> Pingree v. Michigan C. R. Co., 118 Mich. 314, 76 N. W. 635, 53 L. R. A. 274 Annotation: Ann. Cas. 1913D 89,

in which case the Supreme Court of Michigan in its syllabus used the following language, to-wit:

> "The legislature has the power to fix the rate which railroad companies may charge within certain limits.
>
> "The legislature may confer upon a railroad company the exclusive power to fix its rates for the transportation of passengers and freight within a certain maximum, and a subsequent attempt by the legislature to fix such rates is invalid as the impairment of the obligation of a contract."

The Supreme Court of Mississippi, in the case of Stone vs. Yazoo and Mississippi Valley Railroad Company, 62 Miss. 607, 52 Am. Rep. 193, in the body of the case on page 203 used the following language, to-wit:

> "The appellee has the unquestionable right from time to time, by its board of directors, to fix the

rates at which it will transport over its railroads, **provided those rates shall not exceed the maximum prescribed by the charter. That is the contract. These terms were expressly made. On the faith of them capital was invested and the enterprise set on foot. It is not allowable now for one of the contracting parties to interfere with the exercise by the other of its plainly granted rights. They are secured beyond the reach of legislation and cannot be impaired.**

This case condensed rests upon:

1. The contract, Chapter 10,497, Acts of 1925, attached to plaintiff's petition, filed herein and identified as Exhibit "A."

2. Chapter 21,743, Acts of 1943, attached to original petition and identified as Exhibit "B."

3. Chapter 347, Florida Statutes, 1941, copy of which is attached to petition, and identified as Exhibit "C."

4. Petition filed by Miami Beach Railway (Bus) Company with The Railroad Commission, Tr. page 14.

5. Pleas 1, 2 and 3 filed by the Miami Bridge Company, Tr. pages 17, 20 and 23.

6. That portion of the opinion of the Supreme Court of Florida reading as follows:

"The effect of Chapter 21743, supra, is simply **to transfer the power and authority to fix the**

> **amount of the rate to be paid by the public for the use of the 'Venetian Way' from Miami Bridge Company, its present owner, with additional minor regulations, to the Florida Railroad Commission.** * * *

If the judgment rendered by The Railroad Commission was not a final judgment, the judgment rendered by the Supreme Court, as shown by the above quotation, certainly was, and the effect thereof was to impair and practically destroy petitioner's contract.

We call the Court's attention to another recent Florida case, to-wit, the case of Bedell vs. Lassiter, reported in 196 So. page 699, 143 Florida, page 43, wherein the Supreme Court of the State of Florida, said:

> **"Any statute enacted by the Legislature impairing the obligation of a contract is void."** See Cragin v. Ocean & Lake Realty Co., 101 Fla. 1324, 133 So. 569, 135 So. 795.

We also call the court's attention to the case of Rorick vs. Board of Commissioners of Everglades Drainage District, 57 Fed. (2) 1048, wherein the Court said:

> "A State is as capable of making a contract and is as much bound thereby as an individual."

The Supreme Court of Florida in its opinion has referred to Section 30 of Article 16 of the Constitution of Florida, but said provision does not apply unless the record in the case shows "unjust discrimination" and excessive charges by persons and corporations rendering

services of a public nature, and we insist upon the proposition that there is nothing in the record which discloses "unjust discrimination" or excessive charges. The section aforesaid applies primarily to those engaged in the transportation of persons and property.

If the attorneys for the Florida Railroad Commission rely upon the Florida Constitution to sustain the validity of Chapter 21,743, they should not forget that the Florida Constitution, in Section 17, Declaration of Rights, contains another provision reading as follows:

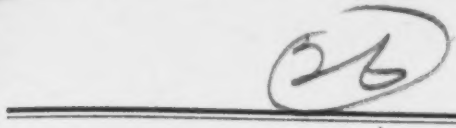
> "No bill of attainder or ex post facto law nor any law impairing the obligation of contracts shall ever be passed."

This court will take judicial cognizance that buses and trucks are more destructive to highways and bridges than ordinary automobiles, and for that reason practically every State in the Union imposes a much higher license tax for the operation of same.

We believe the Constitution of the United States should be upheld.

Respectfully submitted,

Attorney for Petitioner,
Miami Bridge Company.



Supreme Court of the United States

October Term, 1944

No. 1197

MIAMI BRIDGE COMPANY - - - - Petitioner,

versus

RAILROAD COMMISSION OF THE STATE OF FLORIDA - - - - - Respondent.

RESPONDENT'S BRIEF OPPOSING WRIT OF CERTIORARI

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Counsel for Respondents.

R. W. ERVIN, Jr.,
Of Counsel.

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v.

RAILROAD COMMISSION OF THE STATE OF FLORIDA - - - - - - - - - - *Respondent.*

RESPONDENT'S BRIEF

OPPOSING

WRIT OF CERTIORARI

OPINION OF THE COURT BELOW

1. The opinion of the Supreme Court of Florida, review of which is sought in this proceeding, is correctly referred to in Petitioner's brief filed in support of its petition. While the opinion has not been published in the official reports, nevertheless it may be found in Volume 4, Page 356, of the advance sheets of Volume 20 of the second series of Southern Reporter, dated February 8, 1945.

JURISDICTION

While petitioner's brief does not so state, it is apparent that jurisdiction of this Court is invoked by petitioner under Section 237 of the Judicial Code as amended (28 U. S. C., Section 34 (b)).

The foregoing statute is the only authority for taking a case to the Federal Supreme Court from the highest court of a state, and the right to review the decision of a state court exists only in cases strictly within its terms.

Caperton v. Ballard, 14 Wall. 238, 20 L. E. 885;

Gorman v. Washington University, 62 S. Ct. 962, 86 L. Ed. 1300.

The burden is upon petitioners to show affirmatively that the United States Supreme Court has jurisdiction.

Memphis Natural Gas Co. v. Beeler, 62 S. Ct. 857, 86 L. Ed. 1090.

We respectfully submit that it affirmatively appears that this court does not have jurisdicition to review the foregoing decisions of the Supreme Court of Florida by writ of certiorari because:

(A) **It affirmatievly appears that the sole question involved is the construction of a state statute which does not in any way involve the application of the Federal Constitution.**

(B) **It does not affirmatively appear that any Federal statute, ground, question, right or title is involved.**

ARGUMENT

(A) It affirmatively appears that the sole question involved is the construction of a state statute which does not in any way involve the application of the Federal Constitution.

The statute involved in this proceeding is Chapter 21743, Laws of Florida, Acts of 1943, which amended Section 347.08, Florida Statutes, 1941.

Prior to the enactment of the aforesaid amendatory act, respondent had jurisdiction over all toll bridges or causeways in the State of Florida which, including the approaches thereto, were more than three and one half (3½) miles in length.

The purpose of the 1943 amendatory act, aforesaid, was to place all toll bridges or causeways, regardless of length, under the jurisdiction of respondent, with certain specific exceptions.

In the State Court petitioner took the position, among others, that its toll bridge, the "Venetian Causeway", came within the provisions of the stated exceptions. The State Court held adversely to petitioner's position. Although other questions were raised by petitioner, this was the only real question involved and concerned merely the construction of the State statute.

In this court petitioner takes the position that the 1943 amendatory act is violative of the Federal Constitution in that

(1) It deprives the petitioner of *vested rights* without consideration and without due process of law, and

(2) It impairs the obligation of a judicially validated contract.

Of what *vested rights* does petitioner claim it would be deprived?

This question is answered on page 19 of petitioner's brief in the following words:

> "This would necessarily deprive the owners of the bridge (petitioner), if the act was intended to apply and did apply to the Venetian Causeway, of the right to regulate and fix tolls, charges, uses, and hours for keeping open, . . ."

Thus the *vested right* of which petitioner fears it will be deprived is *the right to fix the rate of tolls and charges* and the hours for keeping its bridge open for use by the public.

Such powers, however, cannot be vested rights in the State of Florida. The Constitution of the State of Florida, Section 30 of Article 16, provides:

> "The Legislature is invested with full power to pass laws for the correction of abuses and to prevent unjust discrimination and excessive charges by persons and corporations engaged as common carriers in transporting persons and property, *or performing other services of a public nature;* and shall provide for enforcing such laws by adequate penalties or forfeiture."

This constitutional provision authorizes statutory regulation of all those engaged in rendering intrastate service of a public nature—the public service subjects to be regulated and the nature, extent and method of the regulation

being for legislative determination within organic limitations.

Gainesville Gas, Etc. Co. vs. Gainesville; 63 Fla. 425; 58 So. 785.

Southern Utilities Company vs. Palatka; 86 Fla. 583; 99 So. 236.

Affirmed in 268 U. S. 232.

45 Sup. Court 488; 69 L. Ed. 930.

Perhaps the most outstanding Florida case on this precise question is City of Tampa vs. Tampa Waterworks Co., 45 Fla. 600; 34 So. 631—affirmed in 199 U. S. 241; 26 Sup. Ct. 23. The following quotation from the opinion in that case leaves little room for doubt as to the inability of the legislature to contract away its power to regulate a public service for the public good:

> "The power mentioned in this Section (Section 30, Article XVI) is full power; a continuing, ever present power. Being irrevocably vested by this section, the legislature cannot divest itself of it. Neither can it bind itself by contract, nor authorize a municipality—one of its creatures—to bind it by contract, so as to preclude the exercise of this power whenever in its judgment the public exigencies demand its exercise. Full power cannot exist, if by contract that power can be curtailed or impaired. Without this section the power to regulate rates would exist under the general grant of legislative power in Section 1, Article III, but such power could be surrendered by a contract made by the State or by a municipality by its au-

thority. *With this section in force the power to surrender by contract the right to regulate rates is taken away,* for the authority to surrender cannot co-exist with the ever present continuing power to regulate, which is declared by this section to exist in the legislature. The section in question does not operate to prevent the legislature from making contracts itself, nor from authorizing municipalities to make them and in and by such contracts stipulating for certain rates which will be valid and binding obligations so long as the legisture does not exercise or authorize municipalities to exercise the power to prevent excessive charges which is declared by the section to be vested in the legislature. *But every charter granted and every contract made by the legislature, or by a municipality under its authority, are accepted and made subject to and in contemplation of the possibility of the subsequent exercise of the power to prevent excessive charges which by this section is unalterably and irrevocably vested in the legislature.* The section not only becomes a part of every such contract, as much as if written therein, but by implication it denies the authority of the legislature to bind itself by a contract of its own making, or one made by a municipality under its authorization, not to exercise the power thereby recognized whenever in its wisdom it should think necessary so to do. (Pgs. 626-627).

The case of Public Service Commission vs. Harpers Ferry & Potomac Bridge Company, 114 W. Va. 291; 171 S. E. 760—Certiorari Denied—54 Sup. Court 628; 78 L. Ed. 1479, is strikingly similar to the case at bar. In that case

the Harpers Ferry & Potomoc Bridge Company operated a highway toll bridge extending across the Potomoc River from West Virginia to Maryland under Acts of the Assembly of Maryland and the Legislature of Virginia in which there was fixed the rate to be charged for the use of said bridge. The Public Service Commission of West Virginia brought an action to compel the Bridge Company to file with the Commission a schedule of the tolls charged traffic crossing said bridge from West Virginia. The Bridge Company defended the action on several grounds; one of which was that the original Acts of the respective Assemblies of Virginia and Maryland constituted a contract between the two States and the operators of said toll bridge, the obligations of which neither state could impair because of Article I, Section 10 of the Federal Constitution. This was their third contention. Their fourth contention was that the right of the operators to charge tolls was a property right of which they could not be deprived in whole or part without due process of law under the provisions of the Federal Constitution.

The Court's ruling on these two propositions is found in the following quotation from the opinion in that case:

> "The third proposition of the bridge company is refuted by our case of Laurel Fork, etc. Rd. Co. v. Transportation Co., 25 W.Va. 324. It was held there that, whenever private property was devoted to public use, the owner in effect granted the public an interest in such use, and he must to the extent of that interest submit to legislative control for the common good. That doctrine was pronounced by Lord Chief Justice Hale nearly three centuries ago, and it was traced in the Laurel Fork decision

from Lord Hale through English and State cases to Munn v. Illinois, 94 U. S. 113; 24 L. Ed. 77, where it was approved by the Supreme Court of the United States. * * * * Contracts must be understood as made in reference to the possible exercise of the rightful authority of the government, and no obligation of a contract can extend to the defeat of legitimate government authority."

"The fourth proposition advanced by the bridge company is abstractly sound. But the regulation of a public utility is 'a valid exercise' of the police power of a state. Union Dry Goods Co. v. Georgia, etc., 248 U. S. 372; 39 Sup. Ct. 117; 63 L. Ed. 309; 9 A. L. R. 1420. It is settled that 'neither the "contract" clause nor the "due process" clause (of the Federal Constitution) has the effect of over-riding the power of the state to establish all regulations that are reasonably necessary to secure the health, safety, good order, comfort, or general welfare of the Community'. Atlantic Coast Line R. Co. v. Goldsboro, 232 U. S. 548, 558; 34 S. Ct. 364, 368; 58 L. Ed. 721." (Pgs. 761-762—171 S. E.)

This identical question was also passed upon by the Supreme Court of California in the case of American Toll Bridge Company v. Railroad Commission, 83 P. 2d 1. In this case a franchise to construct and operate a toll bridge had been granted to the American Toll Bridge Company. At the time of granting of the franchise, the power to regulate the companies operating the bridges was vested in the County Commissioners under the laws of California. The franchise was granted in 1923 and the Legislature of California in 1927 passed a law transferring the jurisdic-

tion of toll bridges to the Railroad Commission. Shortly thereafter the Commission instituted a proceeding to inquire as to the fairness of the tolls charged by the bridge company and, after hearings, entered an order substantially reducing the tolls. In the franchise granted by the commissioiners was a provision which required the commissioners, in fixing tolls, not to raise the tolls to the extent where the revenue thus produced would produce annually an income exceeding 15% of the actual cost of the construction or erection and maintenance of the bridge. The bridge company in that case made the same contention that the petitioner is making here, that is, that this statute, containing the maximum at which its rates could be fixed, constituted a contract. Yet the court held that the bridge company did not have a vested right to have its tolls fixed by the County Commissioners and that the limitation of the amount which could be charged for tolls in the statute did not constitute a contract between it and the State. In this case the Court said:

> "The petitioner construes the provisions of the foregoing sections, read together, as securing it against a reduction of the tolls during the specified period unless its net annual revenue exceeds fifteen per cent of the fair cash value. It may fairly be assumed from the evidence that the income in any year, after all deductions, has not equalled the designated fifteen per cent. Merit in the petitioner's contention depends, however, on the propriety of reading into the language of the sections an intent on the part of the legislature to declare that receipts from tolls which return a net annual income of fifteen per cent 'is not disproportionate' to the 'fair cash value', and that it intended to en-

courage the investment of funds by guaranteeing such a return. This construction, however, fails to give such import to the language of the section which prohibits either an increase or a reduction in the tolls unless the receipts are shown to be disproportionate. The language contemplates increases as well as reductions at any time the disproportion is shown to exist, limited by the fifteen per cent maximum. Such language is inconsistent with any intent to enter into a contract that a fifteen per cent return will be assured to the grantee of the franchise, if the toll rate established produced that much. Rather it is to be assumed that the legislature intended, not only to afford an adequate and proportionate return to the grantee, but that it also intended some measure of protection to the public's right to be charged not more than a reasonable toll for the use of the bridge. Toll bridges in this state have been subject to legislative control since 1854. Newsom v. Board of Supervisors, 205 Cal. 262, 266, 270 P. 676. In 1872, when section 2846 was enacted by the legislature, sufficient scope was allowed between both interests, public and private, to permit adequate elasticity in the exercise of the legislative rate-making function in the light of prevailing economic conditions. Such a statute does not savor of a contract obligation to the grantee. Its object was to delegate to and vest in the designated body the power to regulate tolls as circumscribed by the stated limitation. The courts have recognized that this was, and that the creation of a contract obligation was not, the purpose and object of such

statutes. Of a statutory provision permitting participation in the rate-making function by two representatives on the board of commissioners of the Spring Valley Water Company selected at the time of incorporation (later changed by section 1, article 14 of the Constitution vesting the rate-making power in the board of supervisors), it was said: 'These things are not of the contract; they appertain to the sovereignty of the state, and can not be bargained away,' citing Munn v. Illinois, 94 U. S. 113, 126, 24 L. Ed. 77."

This case was upheld by the Supreme Court of the United States in the case of American Toll Bridge Company v. Railroad Commission of the State of California, 307 U. S. 486, 59 S. Ct. 948, 83 L. Ed. 1414-20.

From the foregoing it conclusively appears, we submit, that petitioner has no vested right in the fixing of tolls and charges for the use of its toll bridge nor does it have any vested right in determining the hours such public utility may be used by the public.

Petitioner's second contention is that the amendatory act of 1943 impairs the validity of a judicially validated contract, which contract, the petitioner contends, gives it the right to fix and regulate toll charges, uses and hours for keeping its bridge open for traffic.

We respectfully submit that this contention is fully answered by our preceding argument.

(B) It does not affirmatively appear that any Federal statute, ground, question, right or title is involved.

The Supreme Court has no jurisdiction to review a state court's decision unless it appears affirmatively from the record not only that a Federal question was presented for decision to the highest court of the state having jurisdiction but that its decision of the Federal question was necessary to a determination of the cause, that the Federal question was actually decided, or that judgment as rendered could not have been given without deciding it.

Southwestern Bell Telephone Co. v. State of Oklahoma, 58 S. Ct. 528, 303 U. S. 206, 82 L. Ed. 751.

In view of the fact as developed by our argument herein that petitioner can have no vested right to fix the rate of tolls or charges for the use of its public utility by the public, and in view of the further fact that all contracts concerning the fixing of rates and charges for the use of a public utility is subject to the paramount right of the legislature to alter such rates, we respectfully submit that the petitioner has failed to affirmatively show in its petition and supporting brief that this Court has jurisdiction of this cause.

CONCLUSION

We respectfully submit that the petition should be denied because:

(1) It affirmatively appears that the sole question involved is the construction of a state statute which does not in any way involve the application of the Federal Constitution.

(2) It does not affirmatively appear that any Federal statute, ground, question, right or title is involved.

(3) A Federal right is assumed where none exists.

Respectfully submitted,

LEWIS W. PETTEWAY,
Counsel for Respondents.

R. W. ERVIN, Jr.,
Of Counsel.

(27)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1197

MIAMI BRIDGE COMPANY,

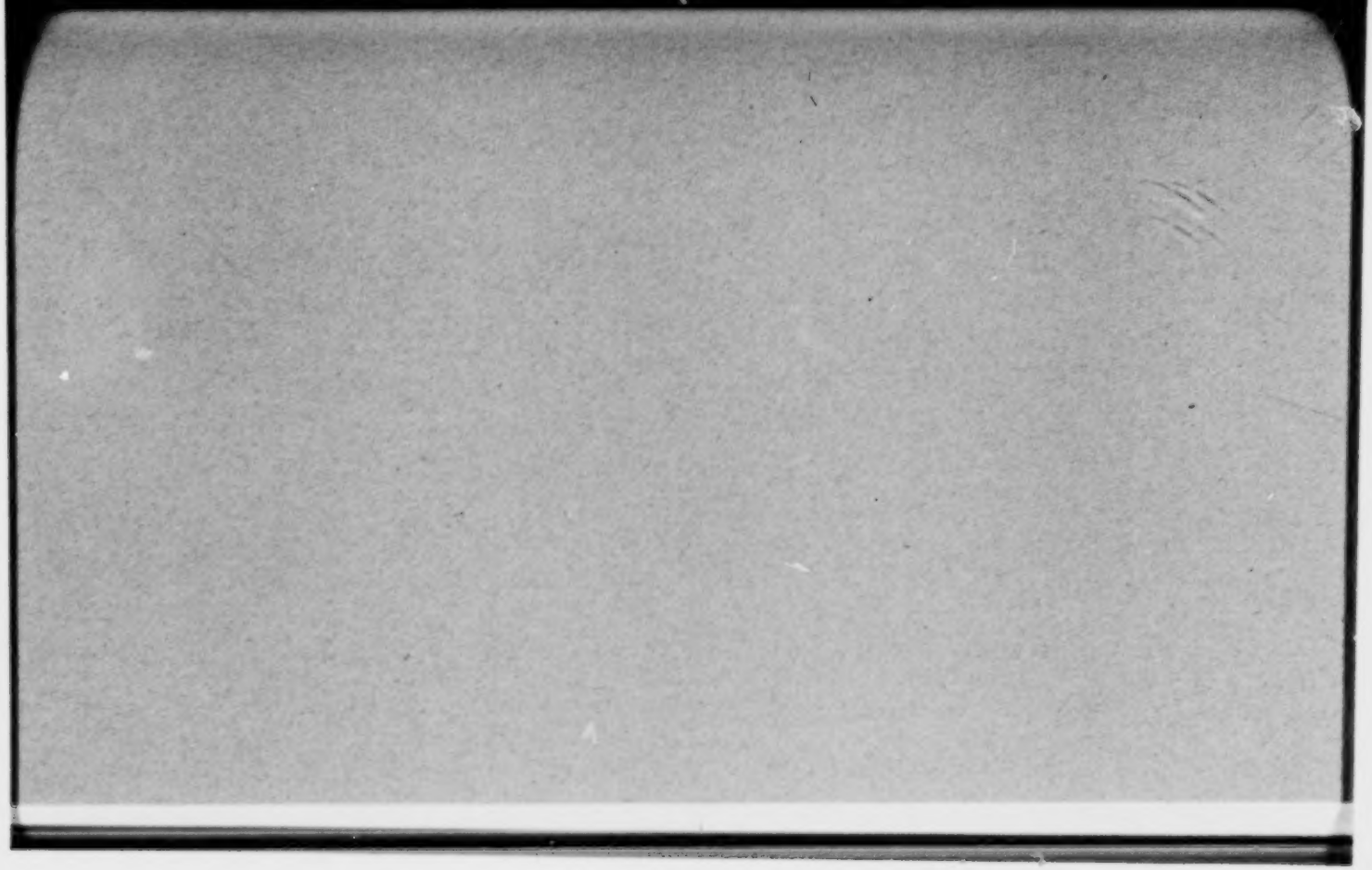
Petitioner,

vs.

RAILROAD COMMISSION OF THE STATE OF FLORIDA

BRIEF OF AMICI CURIAE IN OPPOSITION TO GRANTING WRIT OF CERTIORARI

ROBERT H. ANDERSON,
ALFRED L. MCCARTHY,
Amici Curiae.



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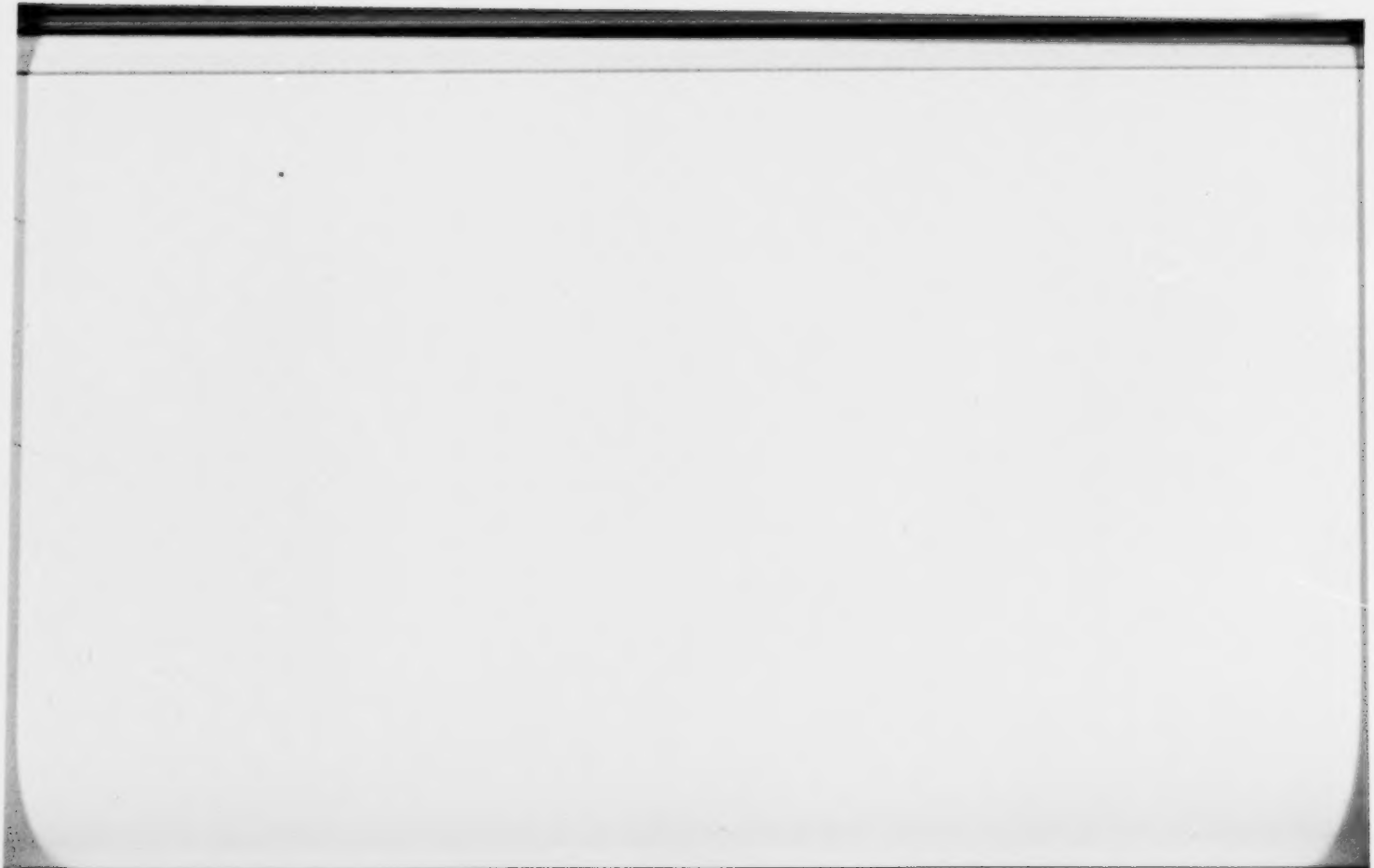

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1197

MIAMI BRIDGE COMPANY,

Petitioner,

vs.

RAILROAD COMMISSION OF THE STATE OF FLORIDA

BRIEF OF ROBERT H. ANDERSON AND ALFRED L. MCCARTHY, AS AMICI CURIAE, IN OPPOSITION TO THE GRANTING OF THE WRIT OF CERTIORARI.

This case involves no constitutional questions that this Court has not decided adversely to the contentions of the petitioner.

Succinctly stated, the only question is:

> Where the Constitution of a State invests the Legislature with full power to pass laws for the correction of abuses and to prevent unjust discrimination and excessive charges by corporations performing services of a public nature, may previously unregulated public utilities, operating under valid franchises fixing maximum rates, be placed under the jurisdiction of a regulatory commission?

The Supreme Court of Florida answered this question in the affirmative [1] (Tr. 49-61).

Applicable Provisions of the Constitution and Statutes of Florida

The Florida Constitution contains the following provision that has been in effect since its adoption in 1885:

ARTICLE XVI

> "Section 30.—The Legislature is invested with full power to pass laws for the correction of abuses and to prevent unjust discrimination and excessive charges [2] by persons and corporations engaged as common carriers in transporting persons and property, or performing other services of a public nature; and shall provide for enforcing such laws by adequate penalties or forfeitures."

The Florida Legislature of 1925 passed a Special Act (Chapter 10497) authorizing the construction, maintenance and operation of roadways, bridges, viaducts and fills over the waters and submerged lands of Bay Biscayne in Dade County, Florida, granting franchises to those complying with its provisions, authorizing tolls to be collected by the grantees and fixing maximum tolls to be charged.[3]

Prior to 1943 the Railroad Commission of Florida had statutory authority to regulate tolls, charges, uses, etc. of all toll bridges [4] in the State more than three and a half

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[1] Miami Bridge Company vs. Railroad Commission of the State of Florida, 20 So. 2d 356.

[2] It will be noted that the legislature is authorized to prevent "excessive charges" as well as "unjust discrimination."

[3] Petitioner claims its rights under this Special Act, a copy of which is attached to the petition (p. 10 et seq.).

[4] The statute excepted toll bridges constructed by counties and political subdivisions or operating under terminable franchises from county commissioners. The exception is not involved in this case.

miles in length [5] (§ 347.08, Fla. Stat. 1941). This had been the law in Florida since 1927.

The Legislature of 1943 enacted Chapter 21743 amending the General Statute (§ 347.08 *supra*) the effect of which was to subject all toll bridges,[5] including the petitioner's, to the regulatory powers of the Railroad Commission of Florida.

History of the Case

Petitioner, Miami Bridge Company, operates a toll bridge known as "Venetian Way" over and across Bay Biscayne and between the cities of Miami and Miami Beach in Dade County, Florida.

The Miami Beach Railway Company, as its name implies, formerly operated trolley cars between Miami and Miami Beach, Florida. Many years ago it substituted buses for the street cars. It is the most important means of transportation between the two cities.

In 1941 the bus company found its facilities greatly overtaxed. This condition was accentuated by the war. It sought to operate some of its buses over the Venetian Way as this afforded a much better and more economical route, thus saving gasoline, tires and time. The Bridge Company refused to permit the buses to be operated at any price and took the position that it could not be compelled to do so. Thereupon the Railway Company brought a suit to compel Miami Bridge Company to permit the buses to be operated at reasonable rates. The Chancellor issued a mandatory injunction authorizing operation of the buses on the causeway, upon the giving of a substantial bond, and appointed a master to ascertain what tolls were reasonable.

The Supreme Court of Florida affirmed this ruling in so far as it upheld the right of the bus company to operate the

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[5] Petitioner's toll bridge involved in this case is less than 3½ miles in length.

buses and declared that the Venetian Way was a public utility. It denied the right of the Chancellor to fix the rates and said that, inasmuch as the causeway was not subject to the jurisdiction of any regulatory body, it had the primary right to fix its own rates subject to attack in the courts for unreasonableness.[6]

At this time all toll bridges in the State of Florida over three and one-half miles in length were under the jurisdiction of the Florida Railroad Commission which had the power to fix their rates, tolls, charges and practices. Upon the announcement of the court's decision the Legislature removed the limitation and put all toll bridges under the Railroad Commission's jurisdiction.

After the passage of the Act placing the Venetian Way (with other toll bridges) under the jurisdiction of the Railroad Commission, The Miami Beach Railway Company filed a petition with that body alleging that the rates fixed by the causeway company were unreasonable, arbitrary, excessive and extortionate, and asked the Commission to fix just, reasonable and non-discriminatory rates for buses operating over the causeway. In spite of the Bridge Company's insistence that it was not subject to regulation by any board, body or commission and, in view of its franchise, that it could not be put under the jurisdiction of any regulatory body, the Florida Railroad Commission denied its pleas, assumed jurisdiction of the cause and set it for hearing.

There is no statutory appeal provided in Florida from orders of the Railroad Commission of this kind. Therefore the Miami Bridge Company sought a writ of certiorari from the Supreme Court of Florida to review the order of the Railroad Commission on constitutional grounds. In such cases, by a long line of decisions in Florida, the only question

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[6] Miami Bridge Company vs. The Miami Beach Railway Company (1943), 152 Fla. 458, 12 So. 2d 438.

reviewable by the court is whether or not the Commission proceeded in accordance with essential requirements of law and did not deny constitutional rights.[7]

The Florida Supreme Court held that no such showing had been made and denied the petition. In so doing, the court says (Tr. 60-61):

> "It is to be presumed that the hearing before the State Railroad Commission will proceed according to the essential requirements of the law. If a conclusion or order is by the Commission made or reached that fails to conform to the essential requirements of the law, then the error, if any, may be corrected in an appropriate proceeding."

From this it appears that the petitioner's application here is premature, to say the least of it, as the Florida Supreme Court clearly held that no rights to which it is entitled have been denied.

On the Merits

But to avoid any technical grounds and to meet the issue squarely, this question is posed:

> Assuming that the Legislature of Florida granted the petitioner an exclusive franchise permitting it to fix maximum rates for vehicles operating over its causeway, did a subsequent statute authorizing the Florida Railroad Commission to prescribe reasonable rates for such vehicles invade the petitioner's vested rights under its franchise or deprive it of due process of law or deny to it the equal protection of the laws?

It is certainly conceded that a franchise is a contract under which the grantee acquires vested rights and that those

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[7] Florida East Coast Railway Company vs. State, 79 Fla. 66, 83 So. 708;
Florida Motor Lines, Inc. vs. Railroad Commission, 101 Fla. 1018, 132 So. 851;
Atlantic Coast Line Railroad Company vs. Railroad Commission, 149 Fla. 245, 5 So. 2d 708.

rights are protected by the Constitution of Florida and the Constitution the United States.

But when the grantee of this franchise accepted it, it did so charged with knowledge that the Constitution of Florida provided:

> "The Legislature is invested with full power to pass laws for the correction of abuses and to prevent unjust discrimination and excessive charges by persons and corporations engaged as common carriers in transporting persons and property or performing other services of a public nature and shall provide for enforcing such laws by adequate penalties or foreitures."

The Miami Bridge Company accepted its franchise not only with full knowledge of the above-quoted constitutional provision but of the fact that the Supreme Court of Florida had held:

> "The section was inserted in response to a popular demand for some provision upon the subject. It does not grant the legislature a power. It expressly recognizes a power and declares that it does exist. The provision is a specified declaration that the power exists in the legislature to be exercised *at any time*, and because of its importance, and possibly to guard against the misinterpretations of other provisions to impair or deny the power, it was specifically mentioned and declared in the constitution. The power mentioned in this section is full power; *a continuing, ever present power*. Being irrevocably vested by this section, the legislature can not divest itself of it."
>
> * * * * * * *
>
> "The section not only becomes a part of every such contract, as much so as if written therein, but by implication it denies the authority of the legislature to bind itself either by a contract of its own making, or one made by a municipality under its authorization, not to exercise the power thereby recognized *whenever*

in its wisdom it should think necessary so to do." (Italics ours.)

City of Tampa v. *Tampa Waterworks Co.* (1903), 45 Fla. 600, 625, 34 So. 631, 639.

And the Miami Bridge Company accepted its franchise with full knowledge that the Supreme Court of the United States, in affirming the *Tampa Waterworks* case, said:

"The decision of a state court that a municipality could not, by a contract with a water company, deprive itself of the right to establish reasonable maximum water rates, conformably to a state statute adopted to carry into effect a provision of the state Constitution in force when the contract was made, which invests the legislature with full power to pass laws to correct abuses and prevent excessive charges by 'persons and corporations engaged as common carriers in transporting persons and property, or performing other services of a public nature,' and declares that the legislature 'shall provide for enforcing such laws by adequate penalties or forfeitures,' is not so clearly erroneous as to require reversal on a writ of error from the Supreme Court of the United States."

Tampa Waterworks Company v. *City of Tampa* (1905), 199 U. S. 241, 26 S. Ct. 23, 50 L. Ed. 170.

Another case directly in point is *American Toll Bridge Company* v. *Railroad Commission of California* (1938), 307 U. S. 486, 59 S. Ct. 948, 83 L. Ed. 1414, where the same contention was made and rejected.

Petitioner apparently places much reliance in § 347.20, Florida Statutes 1941, which provides that nothing in the chapter dealing with toll bridges shall affect or impair any right or privilege belonging to any individual or corporation by virtue of any law of this State. It is difficult to see how this affects the question. It neither adds to nor detracts from the petitioner's rights. It is merely an empty legislative declaration because the constitution prohibited

anything in the statute from affecting or impairing any vested rights belonging to the petitioner. Neither could this section operate to withdraw from the legislature its constitutional right to regulate public utilities. It has been admitted that the petitioner's franchise is a contract, the obligation of which is protected from impairment by the organic law. But the contract was made subject to the reserved powers of the State to regulate utilities, which could not be waived or bartered away. The statute is of no more force than the contract. If the State's reserve powers cannot be contracted away, they cannot be divested by a statute.

Respectfully,

ROBERT H. ANDERSON,
ALFRED L. MCCARTHY,
Amici Curiae.

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